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ALEXANDER L. STEVAS,
CLERK

Nos. 84-237, 84-238, 84-239

In the Supreme Court of the United States

OCTOBER TERM, 1984

YOLANDA AGUILAR, LILLIAN COLON, MIRIAM MARTINEZ AND BELINDA WILLIAMS, APPELLANTS

v.

BETTY-LOUISE FELTON, ET AL.

SECRETARY, UNITED STATES DEPARTMENT OF EDUCATION, APPELLANT

v.

BETTY-LOUISE FELTON, ET AL.

THE CHANCELLOR OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, APPELLANT

v.

BETTY-LOUISE FELTON, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX

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JURISDICTIONAL STATEMENTS FILED
AUGUST 10, 1984, AUGUST 13, 1984 AND AUGUST 13, 1984
JURISDICTION POSTPONED OCTOBER 9, 1984

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Docket No. 78C 1750

DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
8-11-78		COMPLAINT FILED—Summons and additional summons issued. sk (1)
8-16-78		Summons ret. and filed/executed. fy (2)
10-19-78		Notice of motion to dismiss filed. fy (3)
11-8-78		Notice of motion for an order dismissing this action, returnable on Nov. 27, 1978. Filed. ls (4)
12-14-78		By NEAHER, J.—ORDER dated 12/13/78 that defts' motion to Stay this action is GRANTED and that this action is hereby stayed pending final disposition of National Coalition for Public Education and Religious Liberty, et al vs Joseph A. Califano, supra, and G. Hugh Wamble vs Ernest Boyer, et al, supra filed. rh (5)
7-9-79		Letter filed dated July 3, 1979, recvd from Chambers from Dept, of Justice, Washington, D.C. re pending disposition in 76 C 888. rs (6)
11-13-80		Letter filed dtd 11-4-80 from Stanley Geller to Ms. Glenn in response to her request for Status Report. fc (7)
10-2-81		CALENDAR NOTICE dtd 10/2/81 setting pretrial status conference for 10/26/81 @ 4:30 p.m., filed. Copies mailed. mw (8)
10-29-81		By NEAHER, J.—CIVIL MOTION SCHEDULING ORDER dtd 10/26/81 filed. Copies mailed. mw (9)

DATE	NR.	PROCEEDINGS
12-09-81		Defendants' Notice of Motion returnable 12-18-81 at 9:30 A.M. for an order granting leave for persons to intervene as defendants, etc., filed together with Affidavit of Charles H. Wilson. gp (10)
12-09-81		Answer of Intervenor-Defendants, filed. gp (11)
12-09-81		Defendant's Appendicies, filed. gp (12)
12-09-81		Memorandum of Yolanda Aguilar, Lillian Colon, Miriam Martinez and Belinda Williams in support of their motion for leave to intervene as defendants, filed. gp (13)
12-30-81		Defendant's Notice of Appearance, filed. gp (14)
12-30-81		Federal Defendant's response to Motion to Intervene as Defendant, filed. gp (15)
12-30-81		Defendant's Notice of Motion for substitution as a party together with Memorandum in support of his motion for substitution as a party, filed. gp (16)
01-05-82		Calendar Notice dated 01-04-82 that action is set for pre-trial conference on 01-14-82 at 4:30 P.M., filed. Parties informed. gp (17)
3-15-82		BY NEAHER, J.—Stip & order dtd 3-12-82 that the SE. of the US Dept of Education is substituted as deft HHS, Paragraph 20 is amended to add 42 USC 1983 & 1988; etc., and Leo Pfeffer, be added as atty for pltffs, filed. (see stip for details) el (18)
4-12-82		Letter from Elisa Vela, Atty, Federal Programs Branch, USDJ to Clerk, in re: enclosing deft U.S. Secretary of Eduction's Notice of filing the record in National Coalition for Public Education and Religious Lib-

DATE	NR.	PROCEEDINGS
		erty -v- Hufstedler, 446 F. Supp. 193, 489 F. Supp. 1248, filed. These papers are being filed pursuant to Stipulation. Included are: Index to Exhibits, Defts' Exhibit A, Defts' Exhibits B through Defts' Exhibits G through K, Defts' exhibits L through T, Defts' exhibit U—Volume I and defts' exhibit U Volume II, and Trial transcript. el (19)
04-14-82		Plaintiffs' Memorandum of Law in support of their motion for summary judgment, filed. gp (20)
5-12-82		Def's Joint Statement of Material Facts not in dispute filed. em (21)
5-12-82		Memorandum in Support of Def's Joint Cross-Motion for summary judgment & in opposition to pltff's motion for summary judgment filed. em (22)
5-17-82		Letter dated 5/14/82 from Elisa B. Vela, Atty Fed. Programs Branch Civil Div., to Richard H. Weare, Clerk, U.S.D.C.E.D.N.Y., enclosing Defts' Memo of Law in Support of Defts' Joint Cross-Motion for Summary Judgment and In Opposition to Pltffs' Motion for Summary Judgment and Affidavit of John F. Staehle and advising that Defts' Joint Motion and Statement of Facts Not in Dispute have been filed under separate cover by the nonfederal defts filed. rh (23)
5-17-82		Memorandum of Law in Support of Defts' Joint Cross-Motion for Summary Judgment and in Opposition to Pltffs' Motion for Summary Judgment filed together with annexed Affidavit of John F. Staehle, Deputy Director of Compensatory Education Programs, Office

DATE	NR.	PROCEEDINGS
		of Elementary and Secondary Education, U.S. Dept. of Education dated 5/12/82 rh (forwarded to chambers) (24)
6-1-82		Pltffs' counter-statement of material facts not in dispute, filed. (25)
6-1-82		Reply affidavit of Stanley Geller, filed. el (26)
6-1-82		Pltffs' reply memo filed. el (27)
10-11-83		By Neaher, J.—Memorandum and Order dated 10.04.83 that defts' motion for summary judgment is granted, and plaintiffs' motion for summary judgment is denied, filed. Clerk to enter judgment dismissing complaint. gp (28)
10-20-83		Clerk's Judgment dated 10.17.83 that the plaintiffs take nothing of the defts; that the defts. motion for summary judgment is granted; that the plaintiffs' motion for summary judgment is denied; and that judgment is entered in favor of defts. dismissing the complaint, filed. Parties informed. gp (29)
12-02	30	*** *NOTICE OF APPEAL* (pltffs-appellants) from judgment entered 10-20-83, filed with receipt #54049 for C of A docketing fee. C of A notified. Parties informed. vw
1984		
01-17	—	Record on appeal certified & sent to C of A. Ack req. vw
01-23	31	Macchiarola's Notice of cross-motion returnable 05.26.82 at 9:30 A.M. for an order pursuant to Rule 56(c), etc., filed together with Supplemental Affidavit of Lawrence F. Larkin. gp

09/04/84

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Title: Felton v Sec. US Dept of Education
Case Type: CV US
NOA: 12/02/83
Date Docketed: 12/08/83

Dkt: 83-6359
Calendar: 830964
Fee: Pd

Origin: ENY
Division: Brooklyn
Action Filed: 08/11/78
Nature of Suit: 1440

DC-Dkt: 78 CV 1750
DC-J: Neaher, Edward R.
DC Judgment Date: 10/20/83

FORMS, RECORD AND BRIEFING ACTIVITY

Local Rules Forms: 12-09-83
Sufficient Record on Appeal: 02/07/84
Supplemental Record(s) on Appeal:
Last Appellant's Brief: 02/07/84
Last Appellee's Brief: 03/30/84
Last Reply Brief:

ARGUMENT, SUBMISSION, DECISION AND MANDATE ACTIVITY

Argument Date: 04/04/84
Submission Date:
Judge 1: Feinberg, Wilfred
Judge 2: Friendly, Henry J.
Judge 3: Oakes, James L.

Writing Judge: Friendly, Henry J.

Decision Type: Rev

Decision Method: Pub.Sign.Opn
Decision Date: 07/09/84
Mandate Issued:

Citation:

Reopened:

REHEARING AND SUPREME COURT ACTIVITY

Petition for Rehearing Filed:
Petition for Rehearing Decision:
Decision Date:
Mandate Receipt:

Cert. Filed: 08/13/84
Cert. Decision:
Decision Date:
ROA Receipt:

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Attorney: Geller, Stanley, Esq.
Butler, Jablow & Geller
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Atty Type: PRI

Reply Brief

First Brief: 02/07/84 — Second Brief: 3/30/84

Party Name: Green, Charlotte — Type: Pla.A

Attorney: See Previous Attorney Entry — Atty Type:

Party Name: Hruska, Barbara — Type: Pla.A

Attorney: See Previous Attorney Entry — Atty Type:

Party Name: Schwartz, Meryl A. — Type: Pla.A

Attorney: See Previous Attorney Entry — Atty Type:

Party Name: Side, Robert H. — Type: Pla.A

Attorney: See Previous Attorney Entry — Atty Type:

Party Name: Zelon, Allen H. — Type: Pla.A

Attorney: See Previous Attorney Entry — Atty Type:

Party Name: "Secretary, U.S. Dept. of Education" — Type: Dft.E

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FTS 633-3388

Atty Type: USDJ

First Brief: 03/21/84 Second Brief:

Party Name: "Chancellor of the Board of Education" Type: Dft.E

Attorney: Schwarz, Frederick A.O. Atty Type: Pri
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Party Name: Aguilar, Yolanda Type: Intv

Attorney: Delehanty, John, Esq. Atty Type: Pri
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First Brief: Second Brief:

Party Name: Colon, Lillian Type: Intv

Attorney: Buckley, John J. Jr. Atty Type: Pri
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202-331-5051

First Brief: Second Brief:

Party Name: Martinez, Miriam Type: Intv

Attorney: See Previous Attorney Entry Atty Type:

Party Name: Williams, Belinda Type: Intv

Attorney: See Previous Attorney Entry Atty Type:

MOTIONS

Party: Aguilar (I)		Date Filed: 02/23/84
Desc: File Mot: Extend Time to File Brief	Disp: GR	Date: 02/28/84
Party: U.S. Dep't of Educ. (E)		Date Filed: 02/27/84
Desc: Extend Time to File Brief	Disp: GR	Date: 03/06/84
Party: Chancellor-Bd. of Educ. (E)		Date Filed: 02/28/84
Desc: File Motion & Brief Out of Time	Disp:	Date:
Party: Sec, US Dept of Ed (E)		Date Filed: 07/30/84
Desc: Stay Issuance of Mandate	Disp: GR	Date: 08/06/84

SCHEDULED ACTIONS

Description	Due	Extended SO	Satisfied
Index on Appeal	01/21/84		02/07/84
Record on Appeal	02/07/84		02/07/84
Appellant's Brief and Appendix	02/07/84		02/07/84
Appellee's Brief	03/05/84	03/20/84	03/30/84

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

78C 1750

NEAHER, J.

BETTY-LOUISE FELTON, CHARLOTTE GREEN, BARBARA HRUSKA, MERYL A. SCHWARTZ, ROBERT H. SIDE and ALLEN H. ZELON, PLAINTIFFS

—against—

JOSEPH A. CALIFANO, Secretary of the United States Department of Health, Education and Welfare; ERNEST L. BOYER, United States Commissioner of Education; and FRANK J. MACCHIAROLA, Chancellor of the Board of Education of the City of New York, DEFENDANTS

COMPLAINT

Plaintiffs, by their attorney, respectfully allege:

1. This is a civil action brought by the plaintiffs for a temporary and permanent injunction against the allocation and use of the funds of the United States to finance, in whole or in part, instruction in religious schools, and to declare such use violative of the First and Fifth Amendments to the Federal Constitution.

2. Jurisdiction is conferred upon this Court pursuant to Title 26, U.S. Code, Sections 1331, 2201 and 2202.

3. The amount in controversy in this suit, exclusive of interest and costs, is in excess of Ten Thousand Dollars ($10,000), as more fully appears hereinafter.

4. Each of the plaintiffs herein is a citizen of the United States and pays income taxes and other taxes to the United States and each is a qualified legal voter of the United States.

5. Each of the plaintiffs herein is a resident and legal voter of the State of New York and of the Eastern District of New York.

6. Defendant Joseph A. Califano is Secretary of the United States Department of Health, Education and Welfare and is sued herein in that capacity.

7. Defendant Ernst L. Boyer is the United States Commissioner of Education and is sued herein in that capacity.

8. Defendant Frank J. Macchiarola is Chancellor of the Board of Education of the City of New York and is sued herein in that capacity.

9. In 1965, the Congress of the United States enacted and, on April 11, 1965, the President of the United States approved P. L. 89-10, known as the Elementary and Secondary Education Act of 1965 (hereinafter the Act), Title I whereof authorizes federal financial support for special educational programs for educationally deprived children in attendance areas where low income families are concentrated. Section 205 (20 U.S.C. 241e-1(a) as amended) of the Act provides in part that, in order for a local educational agency to qualify for support from the Federal Government under such Title I, it must appear "that to the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall make provision for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate. . ."

10. The Elementary and Secondary Education Act of 1965 authorizes, empowers and requires the defendant Ernest L. Boyer, in his capacity as Commissioner of Education, to pass upon all applications for federal funds to finance programs under the Act and to withhold approval from any program which does not comply with the terms, conditions and limitations of the Act.

11. Defendants Califano and Boyer have construed and applied Title I of the Act to authorize local educational agencies to assign teachers and other personnel to religious schools in order to perform educational services therein during regular school hours, and have approved the expenditure of federal funds to finance these services.

12. Defendant Macchiarola in his capacity as Chancellor of the Board of Education of the City of New York, a local educational agency, has submitted to the defendants Califano and Boyer plans for the use of Title I funds to finance the assignment of teachers and other personnel to perform educational services within the religious schools of New York City during regular school hours, and with their approval has used Title I funds for such purpose.

13. On the 19th day of May, 1975, the United States Supreme Court, in the case of *Meek* v. *Pittenger*, held that the use of tax raised funds to finance educational services performed during regular school hours on religious school premises violates the Establishment Clause of the First Amendment of the United States Constitution.

14. Notwithstanding the aforesaid decision, the defendants have continued to use Title I funds to finance the assignment of teachers to perform educational services within religious schools during regular school hours and have refused to discontinue these practices although due demand therefor has been made.

15. There are many programs within the meaning of Title I of the Elementary and Secondary Education Act of 1965 which could practicably be instituted by local educational agencies which would qualify them for the receipt of federal funds under the Act but which would not violate the provisions of the Federal Constitution. Among these programs are those to provide pupil health and dental benefits in public and nonpublic schools and programs for special instruction in courses such as reading, arithmetic, music and art, and for guidance conducted on publicly owned premises after regular school

hours and open equally to children regularly registered in public and nonpublic schools.

16. On information and belief, large sums of federal funds, the exact amounts whereof are not known to the plaintiffs but far exceeding the sum of $10,000, have been and continue to be used and, unless enjoined by this Court, will continue to be used to finance and aid, in whole or in part, educational services performed within religious schools during regular school hours.

17. This suit involves a genuine case or controversy between the plaintiffs and the defendants.

18. The plaintiffs have no plain, speedy or adequate remedy at law and will suffer irreparable injury unless a preliminary and permanent injunction is granted.

19. Insofar as Title I of the Elementary and Secondary Execution [sic] Act of 1965 authorizes the use of federal funds to support, in whole or in part, the assignment of teachers and other personnel to perform educational services within religious schools during regular school hours, it violates the First Amendment of the United States Constitution in that it constitutes a law respecting an establishment of religion.

20. The plaintiffs pray that the following relief be granted:

(1) that the defendants and each of them be enjoined from approving or carrying out any program for the expenditure of federal funds to finance, in whole or in part, the performance of educational services in religious schools during school hours;

(2) that the Court adjudge and declare that insofar as Title I of the Act authorizes the expenditure of federal funds to finance educational services in religious schools during school hours it is unconstitutional as violative of the Establishment Clause of the First Amendment;

(3) that a preliminary injunction pending trial of the issues be granted to the plaintiffs against the defendants for the relief set forth herein;

(4) that the plaintiffs be granted such other and further relief as to the Court may seem just and proper.

Respectfully submitted,

/s/ Stanley Geller
STANLEY GELLER
400 Madison Avenue
New York, N.Y. 10017
(212) 755-2040
Attorney for Plaintiffs

Dated:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Civil Action No. 78C-1750

BETTY LOUISE FELTON, ET AL., PLAINTIFFS

v.

JOSEPH CALIFANO, ET AL., DEFENDANTS

ORDER

Upon consideration of defendants' Motion to Stay the instant action during the pendency of two other district court actions raising related or identical issues, *National Coalition for Public Education and Religious Liberty, et al.* v. *Joseph A. Califano, et al.*, 76 Civ. 888 (S.D. N.Y., filed February 25, 1976) and *G. Hugh Wamble* v. *Ernest Boyer, et al.*, Civ. No. 77-0254-CV-W-2 (W.D. Mo., filed April 4, 1977), or, in the alternative, to dismiss the action altogether,

And the Court having considered that Motion and the Memorandum filed in support thereof, and having found that the interests of judicial economy for itself, for counsel, and for litigants would best be served by a stay of the action because (1) the prior actions which are appreciably advanced are likely to simplify the issues and assist in determinations of law; (2) proceeding with the instant action at this time serves no useful purpose other than duplication; and (3) the hardship or inequity which the defendants will suffer outweighs any interest the plaintiffs may have in proceeding with the litigation; it is this 13th day of December, 1978,

ORDERED that defendants' Motion be and hereby is granted,

And that this action is hereby stayed pending final disposition of *National Coalition for Public Education and Religious Liberty, et al.* v. *Joseph A. Califano, supra,* and *G. Hugh Wamble* v. *Ernest Boyer, et al., supra.*

/s/ Edward H. Neaher
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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78 Civ. 1750 (ERN)

BETTY-LOUISE FELTON, CHARLOTTE GREEN, BARBARA HRUSKA, MERYL A. SCHWARTZ, ROBERT H. SIDE and ALLEN H. ZELON, PLAINTIFFS

—against—

JOSEPH A. CALIFANO, Secretary of the United States Department of Health, Education and Welfare; ERNEST L. BOYER, United States Commissioner of Education; and FRANK J. MACCHIAROLA, Chancellor of the Board of Education of the City of New York, DEFENDANTS

ANSWER OF INTERVENOR-DEFENDANTS

The intervenor-defendants, by and through their undersigned attorneys, for their answer to the correspondingly-numbered paragraphs of the complaint herein; allege as follows:

1. Deny, except admit that the plaintiffs seek to enjoin certain applications of Title I of the Elementary and Secondary Education Act of 1965, *as amended*, 20 U.S.C. § 2701, *et seq.*

2. Deny, except admit that this Court has jurisdiction pursuant to Title 28 U.S.C. § 1331.

3. Admit.

4-5. Deny sufficient information to form a belief as to the truth of the allegations of these paragraphs.

6-7. Deny.

8. Admit.

9. Deny, except admit that, in 1965, the Congress of the United States enacted and the President of the United States approved P. L. 89-70, known as the Elementary and Secondary Education Act of 1965, and refer to that statute for the full terms and legal effect thereof.

10. Deny, except admit that the duties ascribed to Ernest L. Boyer have been transferred by statute to Terrell H. Bell, the Secretary of the United States Department of Education.

11. Deny, except admit that responsible federal officials have construed Title I of the Elementary and Secondary Education Act of 1965 to permit local educational services on the premises of nonpublic schools during regular school hours.

12. Deny, except admit that defendant Frank J. Macchiarola has submitted to responsible federal officials for approval plans of the New York City Board of Education to use Title I funds to pay the salaries of public schools in New York City during regular school hours.

13. Deny, except admit that the United States Supreme Court issued an opinion in *Meek* v. *Pittenger*, 421 U.S. 349, on May 19, 1975, and refer to that opinion for the full terms and legal effect thereof.

14. Deny, except admit that Title I funds have been used to pay the salaries of publicly-employed teachers who provide remedial educational services to qualified students in nonpublic schools during regular school hours.

15. Deny.

16. Deny, except admit that Title I funds in excess of Ten Thousand Dollars ($10,000.00) have been expended to pay the salaries of publicly-employed teachers who provide remedial educational services at nonpublic schools during regular school hours.

17. Admit.

18-20. Deny.

Affirmative Defense

The complaint fails to state a claim upon which relief can be granted.

WHEREFORE, intervenor-defendants request that the complaint be dismissed with prejudice and that the defendants and intervenor-defendants be granted such other and further relief as this Court may deem just and proper.

Respectfully submitted,

PARKER AUSPITZ NEESEMANN & DELEHANTY P.C.

By /s/ Illegible
415 Madison Avenue
New York, New York 10017

—and—

WILLIAMS & CONNOLLY
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Washington, D.C. 20006

Attorneys for
Intervenor-Defendants

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Civil Action No. 78C-1750 (ERN)

BETTY-LOUISE FELTON, CHARLOTTE GREEN, BARBARA HIRUSKA, MERYL A. SCHWARTZ, ROBERT H. SIDE and ALLEN H. ZELON, PLAINTIFFS

v.

SECRETARY, UNITED STATES DEPARTMENT OF EDUCATION; and FRANK J. MACCHIAROLA, CHANCELLOR OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, DEFENDANTS

STIPULATION

It is hereby stipulated and agreed by the parties, through their respective counsel, as follows:

1. The Secretary of the United States Department of Education is substituted as defendant in this action for his predecessors Joseph A. Califano, Secretary of Health, Education and Welfare and Ernest Boyer, Commissioner of Education. The case caption is amended to reflect this substitution.

2. Paragraph 2 of the complaint is amended to add 42 U.S.C. 1983 and 42 U.S.C. 1988.

3. Paragraph 20 of the complaint is amended to add the following:

"(5) that the plaintiffs be granted the costs and disbursements and counsel fees in accordance with 42 U.S.C. 1988,"

4. Leo Pfeffer, 15 East 84th Street, New York, New York 1028, [sic] (212) 879-4500, is added as an attorney for the plaintiffs.

5. The Title I program of the City of New York, as presented by the testimonial and documentary evidence in *National Coalition for Public Education and Religious Liberty* v. *Hufstedler*, 446 F.Supp. 193, 489 F.Supp. 1248, appeal dismissed for want of jurisdiction, 101 S.Ct. 55 (1980), is substantially the same and is hereby made part of the record in this action.

Defendants shall file said record on or before April 12, 1982, the date on which plaintiffs shall file their motion for summary judgment.

Defendants shall have to and including May 12, 1982, the date of the filing of their response, within which to file updating materials or figures.

6. On or before April 12, 1982, the plaintiffs shall move for summary judgment for the relief prayed for in the complaint.

7. On or before May 12, 1982, the defendants shall respond to plaintiffs' motion and, if they deem fit, cross-move for summary judgment dismissing the complaint.

8. On or before May 26, 1982, the plaintiffs shall, if they deem fit, reply to the defendants' motion.

9. Yolanda Aguilar, Lillian Colon, Miriam Martinez and Belinda Williams may be admitted as intervenor-defendants in this action and the caption of the action shall be changed accordingly. By signing this Stipulation through their attorneys, the intervenors agree to be bound by its terms, including the schedule of dates set forth in paragraph 6, 7 and 8 of the Stipulation.

10. The parties agree that this Stipulation be entered as an order of the Court.

11. Counsel for defendant Macchiarola, Lorna Goodman, has consented to the terms of this Stipulation and authorized counsel for the federal defendant to sign this Stipulation on her behalf.

12. Counsel for defendant-intervenors, Joseph C. Markowitz, has consented to the terms of this Stipulation and

authorized counsel for the federal defendant to sign this Stipulation on his behalf.

/s/ Stanley Geller
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Attorney for Plaintiffs

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Attorney for Plaintiffs

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Attorney for Defendant-Intervenors

Dated: March 5, 1982.

IT IS SO ORDERED this 12th day of March, 1982.

/s/ Edward R. Neaher
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Civil Action No. 78C-1750

BETTY-LOUISE FELTON, CHARLOTTE GREEN, BARBARA HIRUSKA, MERYL A. SCHWARTZ, ROBERT H. SIDE and ALLEN H. ZELON, PLAINTIFFS

v.

SECRETARY, UNITED STATES DEPARTMENT OF EDUCATION; and FRANK J. MACCHIAROLA, CHANCELLOR OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, DEFENDANTS

NOTICE OF FILING

The parties to this action have agreed and stipulated that the record consisting of testimonial and documentary evidence in *National Coalition for Public Education and Religious Liberty* v. *Hufstedler*, 446 F.Supp. 193, 489 F.Supp. 1248, appeal dismissed for want of jurisdiction, 101 S.Ct. 55 (1980), has remained substantially the same * and that it be made a part of the record in this action. Accordingly, pursuant to that stipulation, defendant Secretary of the United States Department of Education, through his counsel, herein submits on behalf of all the parties, a true and correct copy of said record. The record consists of the following:

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* The parties have stipulated further that defendants shall have to and including May 12, 1982 within which to file updating materials or figures.

Exhibit	Description	Offered By
A	Application and program plan for the New York City Board of Education's Program of Title I Services for Nonpublic School Students, 1978-1979	Lawrence F. Larkin
B	Memorandum from Frank J. Macchiarola to Principals of Nonpublic Schools, March 1, 1979, *re* Identification of ESEA Title I Eligible Nonpublic School Pupils Residing in Designated ESEA Title I Target Areas, 1979-1980	Lawrence F. Larkin
C	Memorandum from Lawrence F. Larkin to Principals of Nonpublic Schools Enrolling Pupils Eligible for ESEA Title I Services, May 24, 1978	Lawrence F. Larkin
D	Volume I of memoranda and directives relating to administration of New York City's Title I program for nonpublic school students	Lawrence F. Larkin
E	Volume II of memoranda and directives relating to administration of New York City's Title I program for nonpublic school students	Lawrence F. Larkin
F	Volume III of of [sic] memoranda and directives relating to administration of New York City's Title I program for nonpublic school students	Lawrence F. Larkin
G	Standard requisition form of the Bureau of Supplies of the New York City Board of Education	Lawrence F. Larkin
H	Inventory control label for equipment used in nonpublic school Title I program	Lawrence F. Larkin
I	Equipment inventory card for the nonpublic school Title I program	Lawrence F. Larkin

Exhibit	Description	Offered By
J	Memorandum from Lawrence F. Larkin to Principals of Nonpublic Schools and Title I Staff Members, June 6, 1978, *re* Equipment Inventory	Lawrence F. Larkin
K	Bound volume of memoranda from Lawrence F. Larkin to principals of nonpublic schools	Lawrence F. Larkin
L	New York City Board of Education Resolution of August 31, 1966, with accompanying "Statement by Board of Education on Title I Proposals"	Lawrence F. Larkin
M	Letter from William F. Pierce, Acting United States Commissioner of Education, to Arthur L. Mallory, Missouri Commissioner of Education, July 22, 1976, with accompanying Report on the On-Site Investigation of the Participation of Private School Children in Title I, ESEA, in Jefferson City, Kansas City, St. Louis, and St. Joseph, Missouri, May 24-28, 1976	Lawrence F. Larkin
N	Analysis of Difference in Costs and Services for On-Premises and Off-Premises Services to Nonpublic School Pupils During the Regular School Day	Lawrence F. Larkin
O	Evaluation report — Central ESEA Title I Remedial Services for Eligible Nonpublic School Pupils: Corrective Reading Component, 1975-1976	Lawrence F. Larkin
P	Evaluation report — Central ESEA Title I Remedial Services for Eligible Nonpublic School Pupils: Reading Skills Center Component, 1975-1976	Lawrence F. Larkin
Q	Evaluation report — Corrective Mathematics Services for Eligible Nonpublic School Pupils, 1975-1976	Lawrence F. Larkin

Exhibit	Description	Offered By
R	Evaluation report — Central ESEA Title I Remedial Services for Eligible Nonpublic School Pupils: English as a Second Language, 1975-1976	Lawrence F. Larkin
S	Evaluation report — Central ESEA Title I Remedial Services for Eligible Nonpublic School Pupils: Clinical and Guidance Services, 1975-1976	Lawrence F. Larkin
T	Narrative Summary of Defendants' Written Evidence	Agreement of Counsel
U	Two bound volumes of affidavits of persons involved in or affected by the administration of New York City's nonpublic school Title I program	Agreement of Counsel
TRIAL TRANSCRIPT	Hearing before Judge Tenney on May 10, 1979	——

Respectfully submitted,

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UNITED STATES DISTRICT COURT
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Civil Action No. 78C-1750

BETTY-LOUISE FELTON, CHARLOTTE GREEN, BARBARA HIRUSKA, MERYL A. SCHWARTZ, ROBERT H. SIDE and ALLEN H. ZELON, PLAINTIFFS

v.

SECRETARY, UNITED STATES DEPARTMENT OF EDUCATION, and FRANK J. MACCHIAROLA, CHANCELLOR OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, DEFENDANTS

and

YOLANDA AGUILAR, LILLIAN COLON, MIRIAM MARTINEZ and BELINDA WILLIAMS, INTERVENOR-DEFENDANTS

DEFENDANTS' JOINT STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

I. *FEDERAL ASPECTS OF THE TITLE I PROGRAM*

A. *Statutory and Regulatory Overview*

1. Title I of the Elementary and Secondary Education Act, 20 U.S.C.A. § 2701, *et seq.*, *as amended*, was enacted in 1965 to provide a mechanism for funding compensatory educational programs administered by local public education agencies and directed to educationally deprived children in low-income areas. The basis for this new approach was the documented finding that learning deficiencies and poverty are positively and significantly

correlated. S. Rep. No. 146, 89th Cong., 1st Sess., U.S. Code Cong. and Admin. News 1446, 1450 (1965).

2. In enacting the Elementary and Secondary Education Act of 1965, Congress expressly recognized that "the special educational needs of children of low-income families and the impact [of] concentrations of low-income families" seriously impaired the ability of local school boards to support adequate educational programs for such children. 20 U.S.C.A. § 2701. Congress, therefore, declared it to be the policy of the United States "to provide financial assistance . . . to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means . . . which contribute particularly to meeting the special educational needs of educationally deprived children." *Id.*

3. Under Title I, grants may be provided to several types of agencies. These agencies include (a) state public agencies that are directly responsible for the education of children in institutions for neglected and delinquent children, 20 U.S.C.A. § 2781; (b) state public agencies that are directly responsible for the education of handicapped children, 20 U.S.C.A. § 2771; (c) state public educational agencies for programs for migrant children of migrant agricultural workers, 20 U.S.C.A. § 2761; and (d) local public educational agencies for children in locally operated institutions for neglected and delinquent children, 20 U.S.C.A. § 2783. This suit concerns grants to local public educational agencies for educationally deprived children in certain attendance areas. 20 U.S.C.A. § 2711. The term "local educational agencies" means a public board of education or other public authority, legally constituted within the state to have administrative control and direction over, or to perform a service or function for, public elementary and secondary schools within a city, county, township or other political subdivision within a state. 20 U.S.C.A. § 2854(10). The local edu-

cational agency involved in this case is the New York City Board of Education. Def. Exh. U (Tab A-4, ¶ 14).

4. The Act provides for annual appropriations by the Congress to support programs proposed by local educational agencies ("LEAs") and approved by state educational agencies ("SEAs"). 20 U.S.C.A. § 2731. All such programs are administered solely by the LEA in the affected localities, and staffed solely with employees of the LEA. 20 U.S.C.A. § 2734(m). The Title I program is administered at the federal level by the United States Commissioner of Education. 20 U.S.C.A. § 2702 *et seq.*

5. The educational services that may be provided under Title I include remedial training in reading and mathematics, the teaching of English as a second language, diagnostic testing, and special programs for the physically handicapped. Def. Exh. U (Tab A-1, ¶ 4).

6. Title I programs are made available to children regardless of whether they attend a public or a nonpublic school. The only bases for eligibility are that the school district and attendance area in which the children reside contain a specified concentration of children of families below the poverty level and that the child be educationally deprived. 20 U.S.C.A. § 2733(a); 34 C.F.R. §§ 201.50-201.52, 201.70-201.71. Educationally deprived children are those who need special educational assistance to raise their educational attainment to that appropriate for children of their age. 34 C.F.R. § 201.4.

7. Title I establishes the formula for measuring the maximum grant that the SEA may make to any LEA. 20 U.S.C.A. § 2711(a)(2)-(3); 34 C.F.R. § 201.12. The size of grants to be awarded to the various LEAs is based upon the distribution of children from low-income families. 20 U.S.C.A. § 2711(a)(2)-(3); 34 C.F.R. § 201.12.

8. In addition, special grants are made available for funding programs for LEAs in states that have a substantially greater than average per-pupil expenditure for remedial educational programs. 20 U.S.C.A. §§ 2721-22.

9. Funds under Title I may be provided by the SEA to the LEA only for programs that meet the statutory criteria. As a condition for being authorized to draw upon Title I funds, the SEA must file an application and a program plan that contains assurances that the SEA will permit expenditures only for approved projects and that those projects will comply with the requirements of Title I. 20 U.S.C.A. §§ 2802, 2811. The plans submitted to the SEA by LEAs must include a statement describing the purposes for which the federal funds to be supplied under Title I will be used during the fiscal years for which the program plan is submitted. 20 U.S.C.A. § 2731.

10. To be eligible for Title I funding, an LEA must submit an approvable application to the SEA. 20 U.S.C.A. § 2731. To be approvable, the application must demonstrate that the LEA will meet, *inter alia*, the following criteria:

(a) Payments will be made only for the costs of programs and projects which will supplement rather than supplant non-federally funded programs that would have been made available in the absence of Title I funds. 20 U.S.C.A. § 2736(c); 34 C.F.R. § 200.92, 201.130-201.144.

(b) Programs and projects funded with Title I funds will be designed to meet the special educational needs of educationally deprived children in attendance areas having high concentrations of children from low-income families and will be of sufficient size, scope and quality to give reasonable promise of meeting the affected children's special educational needs. 20 U.S.C.A. § 2734(a), (d).

(c) Eligible nonpublic school children must be able to participate on an equitable basis in suitable Title I programs. 20 U.S.C.A. § 2740; 34 C.F.R. § 76.654.

(d) Title I funds will be controlled and administered soley by the LEA. 20 U.S.C.A. § 2734(m).

(e) The LEA will provide for the measurement of program effectiveness on a regular basis and will provide sufficiently detailed information to the SEA to enable it

to determine student achievement and local compliance with the requirements of Title I. 20 U.S.C.A. §§ 2734(g), 2821.

(f) Information derived from educational research, demonstration and similar projects will be disseminated to administrators and teachers, and promising educational innovations derived thereby will be adopted by the LEA. 20 U.S.C.A. § 2734(h).

(g) An advisory council for the school district and separate councils for each school in which Title I programs are carried out will be established, composed principally of the parents of eligible children, and authorized to advise the LEA on planning, implementation and evaluation of Title I programs. 20 U.S.C.A. §§ 2734(j), 2735; 34 C.F.R. §§ 201.150-201.162.

11. In making its application to the SEA for Title I funding, the LEA must demonstrate that it has taken the following steps in formulating its proposed programs or projects:

(a) reviewed all available data, including that developed from prior Title I projects, to determine the incidence and severity of educational deprivation among children;

(b) selected the eligible attendance areas to be served (project areas), the age or grade level of the children to be served, and the particular types of educational needs that the projects will address;

(c) identified all educationally deprived children in the target age or grade within the project area who have the type of educational needs that the projects are designed to satisfy;

(d) selected those educationally deprived children identified in (c) who are most in need of special assistance;

(e) specified the criteria by which educationally deprived children in the project area are to be selected to participate in the Title I projects;

(f) employed adequate diagnostic techniques to determine the special educational needs of the children chosen to participate in the Title I projects; and

(g) consulted with teachers, parents and other knowledgeable persons concerning the needs of the children to be served in the project areas. 20 U.S.C.A. §§ 2731-34; 34 C.F.R. §§ 200.30-200.31.

12. The LEA's application must also describe in detail, *inter alia*, the proposed project, including its objectives and their relationship to the children's educational needs, the staff and material to be utilized, the time periods and locations for the project services, the number of children involved and their educational needs, the evaluation techniques to be utilized, the budget required for the project, and plans for consultation with parents. 20 U.S.C.A. §§ 2731-34; 34 C.F.R. §§ 201.40-201.41.

13. The SEA may approve the project only if it is consistent with the requirements listed in paragraphs 10, 11 and 12, *supra*, and if the SEA finds that: the project shows reasonable promise of meeting the special educational needs of the participating children; the evaluation techniques are adequate; the project is large enough and yet sufficiently concentrated to give reasonable promise of attaining its educational objectives; the project is not designed to meet, and will not meet, the general needs of any school or student body at large; the Title I services will be directed only to eligible children selected in accordance with the procedures set forth in the Department's regulations; educational services financed by state and local funds are provided on an equitable basis to all children in the public schools without regard to the availability of Title I funds; and such services are provided on an equitable basis to eligible nonpublic as well as public school students. 20 U.S.C.A. §§ 2811, 2821; 34 C.F.R. §§ 76.654, 200.110-200.113.

14. Since eligibility to participate in Title I programs is not limited to children in public schools, special provi-

sion is made in the Title I statute and in the regulations issued thereunder by the Department of Health, Education and Welfare to assure that such services are available to all educationally deprived children in project areas. Specifically with respect to educationally deprived children enrolled in private schools and residing within the project area, the statute and regulations require that the LEA provide genuine opportunities to participate in Title I educational services that meet their special educational needs. 20 U.S.C.A. §§ 2732-33, 2740; 34 C.F.R. §§ 76.651, 76.654.

15. Among the alternatives for such participation are dual enrollment, educational radio and television, and educational services and equipment on other than public school premises. More generaly, [sic] the LEA is required to determine the needs of educationally deprived children enrolled in private schools and meet those needs on a basis comparable in quality, scope and opportunity for participation to that used in providing for participation in the program by educationally deprived children enrolled in public schools. 20 U.S.C.A. § 2740; 34 C.F.R. § 76.654.

16. To assure that Title I funds are used only for their designated purpose of correcting educational deprivation among children in poverty-stricken areas and not to aid either public or nonpublic schools or other institutions, the Title I regulations provide that Title I funds may not be used to provide services that would otherwise be provided to the children served by Title I. 34 C.F.R. § 76.658.

17. To assure that all Title I programs are secular both in content and in setting, the Title I regulations impose a number of restrictions on the services to be provided to nonpublic school students. They include the following:

(a) Public school personnel may be made available on other than public school premises only to the extent necessary to provide special services (including therapeutic,

remedial, welfare and health services, guidance and counseling and breakfast programs for poor children) to those educationally deprived children for whom the Title I projects were designed, and only if such services are not otherwise provided in the nonpublic schools. 34 C.F.R. §§ 76.658, 76.659.

(b) The LEA must maintain exclusive direction and control over the provision of Title I services, wherever they are provided. 34 C.F.R. § 76.661.

(c) Nonpublic school teachers are not to be paid in a Title I project except to perform services outside their regular hours of duties and under public supervision and control. 34 C.F.R. § 76.660.

(d) Control over the use of all Title I funds and all property acquired with such funds must remain in the LEA. The LEA must maintain title to such property. If Title I equipment is to be used in a project conducted on the premises of a nonpublic school, the LEA must retain sole control of the equipment, as well as of the project itself, and must remove the equipment from the nonpublic school premises, if necessary, to prevent its being used for any purpose other than as part of the Title I project. 34 C.F.R. § 76.661.

(e) Any project carried out on the premises of a public school and involving joint participation of public and nonpublic school children must avoid classes separated according to school enrollment or religious affiliation of the children. 34 C.F.R. § 76.657.

18. Failure by the SEA to comply with any of the requirements of Title I pertaining to approval of local projects, disbursement of funds or supervision of the LEA results in a termination or suspension of funding. 20 U.S.C.A. § 2836(a); 34 C.F.R. §§ 200.260-200.263. If, however, the LEA is prohibited by state or local law from providing for participation by nonpublic school students on an equitable basis in Title I programs or substantially fails to do so, the United States Commissioner of Education is required to waive the statutory requirement that

the state provide for such participation, and instead arrange directly for the provision of Title I services to eligible children enrolled in nonpublic schools. 20 U.S.C.A. § 2740(b); 34 C.F.R. §§ 201.90-201.97.

B. *The Scope of the Title I Program*

19. Title I programs are conducted throughout the United States, Puerto Rico and outlying territories. In the 1980-1981 school year, approximately 5,200,000 public school children and approximately 190,000 nonpublic school children received educational and related services through Title I projects. Affidavit of John F. Staehle ¶ 3.

20. For the 1982 fiscal year, approximately $3,100,000 has been allocated to grants under Title I. Affidavit of John F. Staehle ¶ 3.

C. *The Missouri Study*

21. In February, 1976, the United States Commissioner of Education received a written complaint from representatives of nonpublic school children in Missouri to the effect that the Title I services provided to educationally deprived children enrolled in nonpublic schools in the State of Missouri were not equitable—that is, not comparable to the services provided to such children enrolled in public schools. Def. Exh. U (Tab A-2, ¶ 4). The basis for the complaint was that, while eligible public school children participated in Title I remedial programs during the regular school day, children enrolled in nonpublic schools received such instruction only early in the morning before school had begun, or late in the afternoon after school had ended, or else on Saturdays or in the summer. Missouri officials had construed state law as prohibiting the provision of such services to nonpublic school children at their schools during school hours. *Id.* at ¶ 5.

22. Since the Commissioner is required, under Title I, to arrange directly for the provision of services to eligible

nonpublic school students if the state agency is not providing "comparable" services to them, a study was conducted by representatives of the Commissioner to determine whether Title I projects conducted before or after the school day on the premises of nonpublic schools were comparable to the services provided public school students during the day. Def. Exh. U (Tab A-2, ¶ 6).

23. The first stage of the study was to investigate Title I services in four large LEAs in Missouri. This investigation included on-site visits to the LEAs during the week of May 24-28, 1976. The investigation also included a review of budget statistics and attendance data for eligible public and nonpublic school students, and interviews with Title I administrators and teachers, public and nonpublic school officials and teachers, and parents of public and nonpublic school children, including members of the Title I Parent Advisory Councils. Def. Exh. M; Def. Exh. U (Tab A-2, ¶¶ 7-13).

24. The investigation demonstrated that Title I services provided in the four LEAs at times other than during the school day were not, and probably could not, be comparable in quality, scope and opportunity for participation, to services provided during the regular school hours. Def. Exh. U (Tab A-2, ¶ 14).

25. The principal reasons for this inequity were found to be the following:

(a) Although planned student attendance by nonpublic school children was equivalent to planned attendance by public school children, actual participation by nonpublic school children was much lower than that of public school children because (i) nonpublic school students were too fatigued after a full day of school to attend the Title I program; (ii) the after-school program conflicted with other activities planned by the eligible students; (iii) parents were reluctant to allow their children to stay after school ended because they would then not return home until late in the day; (iv) the children often

viewed staying after the school day as punishment; (v) many students had after-school jobs or family chores to perform; (vi) parents were concerned for the safety of their small children; and (vii) children were rarely willing to attend such programs on a Saturday.

(b) The children actually attending after-school programs did not receive comparable services because (i) they were fatigued or lacked concentration; (ii) Title I personnel—many of whom had other duties during the regular school day—also were tired, and thus many performed at less than full effectiveness; and (iii) in some cases, it was impossible to hire sufficient numbers of qualified specialists to provide services after the regular school day.

(c) Serious logistical problems developed because of the necessity of conducting Title I programs other than during the regular school day. They included the following: (i) buildings were sometimes not opened early enough for programs scheduled to begin before regular school hours; (ii) schools were sometimes unable to provide proper supervision for participating children during the time interval between the end of the regular school day and the commencement of the Title I programs; and (iii) supervision of children walking from their nonpublic school to a public school center was inadequate.

(d) The optimum length and frequency of remedial instruction was determined by Missouri State guidelines to be one 50-minute class every day during the school week. The scheduling of Title I classes after school or on Saturday, however, meant that programs were conducted only once or twice a week, or for longer periods than 50 minutes—one hour and 15 minutes to two hours on weekdays and three to four hours on Saturdays.

(e) Although maximum effectiveness of Title I services depended to a large degree upon contact and coordination between Title I teachers, on the one hand, and the regular school teachers and parents, on the other, such contact was much less frequent when the Title I pro-

gram was conducted before or after the regular school day or on Saturdays.

(f) Significantly larger proportions of budgeted Title I funds were spent on non-instructional expenses, such as security and transportation, in Title I programs directed to eligible nonpublic school students than in the programs for public school students. Consequently, proportionately less was spent for instructional expenses in the programs for nonpublic school children. Def. Exh. U (Tab A-2, ¶ 15).

26. Based upon the findings of this study, the Commissioner determined that the Title I services provided to eligible nonpublic school students in the four LEAs in Missouri were not comparable in quality, scope or opportunity for participation, and consequently directed that the United States Office of Education arrange directly for the provision of such services in those LEAs. A similar determination has been made with regard to additional LEAs in the state. Def. Exh. U (Tab A-2, ¶ 16).

27. A true copy of the "Report on the On-Side Investigation of the Participation of Private School Children in Title I, ESEA, in Jefferson City, Kansas City, St. Louis, and St. Joseph, Missouri, May 24-28, 1976," is part of Def. Exh. M.

II. *NEW YORK CITY'S TITLE I PROGRAM*

A. *Overview of the New York City Program*

28. The New York City Board of Education ("Board") is responsible for the largest program of remedial educational services under Title I in the United States. The Board has received $147,850,892 in Title I funds for the 1981-1982 school year, an amount that represents 63.32 percent of New York State's total Title I allocation for that year. Supplementary Affidavit of Lawrence F. Larkin ¶ 9. Of those Title I funds available to the Board for the 1981-1982 school year, $20,003,028, or 13.5 per-

cent, has been allocated for Title I services for nonpublic school students. *Id.* at ¶ 9.

29. For the 1981-1982 school year, a total of 302,382 public and nonpublic school students in New York City were eligible for Title I remedial services. Of that total, 40,120, or 13.2 percent, were enrolled in nonpublic schools. *Id.* at ¶ 9. Budget limitations, however, made it impossible to provide Title I remedial services to all of those eligible nonpublic school students. Of the total number of eligible nonpublic school students, approximately 21,000 were expected to receive Title I remedial services during the 1981-1982 school year. Those students attend 231 of the 993 nonpublic schools in New York City. *Id.* at ¶ 7.

30. The Board's approved Title I program plan provides five types of remedial educational programs to qualified nonpublic school students. Those five programs are as follows: a Corrective Reading Program, a Reading Skills Program, a Corrective Mathematics Program, an English as a Second Language Program, and a Clinical and Guidance Program. Def. Exh. U (Tab A-4, ¶ 15). Those remedial services are comparable to those provided for qualified public school students in New York City.

B. *New York City's Title I Organization*

31. The Board is the designated local educational agency in New York City and, as such, has ultimate responsibility for the New York City program. Def. Exh. U (Tab A-4, ¶ 14). The Board's principal Title I functions have been to establish general policies and priorities for the operation of the program. The Board thus has approved the method for identifying low-income and educationally disadvantaged children, the annual Title I application and program plan submitted to the New York Education Department, the allocation of funds between the public and nonpublic school programs, and personnel policies. Def. Exh. U (Tabs A-3 and A-4, ¶ 26).

32. Responsibility for implementing and monitoring the New York Title I program rests with the Chancellor of the Board of Education, Frank J. Macchiarola, who is a defendant in this action. Overall administration of the Title I program has been delegated to the Board's Office of Funded Programs, which coordinates most non-tax levy, reimbursable programs of the Board. Perry Davis is the Acting Director of the Office of Funded Programs. Def. Exh. U (Tab A-4, ¶ 27).

33. Direct supervision of the Title I program for nonpublic school students throughout New York City is the responsibility of the Office of Special Projects. The Director of that office is Lawrence F. Larkin. That agency of the Board employs teachers and other professionals to provide Title I remedial services to nonpublic school students, develops the guidelines and procedures for implementing those Title I remedial services, assigns teachers and other professionals to provide services to nonpublic school students, exercises sole supervision over the teachers and other professionals, and handles all other aspects of the administration of the nonpublic school Title I program. *See generally* Def. Exh. U (Tab A-4).

34. In carrying out its administrative responsibilities, the Office of Special Projects coordinates its activities with several other departments within the Board. For example, the Bureau of Supplies orders and distributes instructional materials and other supplies required by nonpublic school Title I teachers and other professionals. The Office of Business and Administration establishes regulations and procedures for fiscal control and authorized expenditure of funds. And the Division of Personnel screens applicants for all teaching and supervisory positions in the nonpublic school Title I program. Def. Exh. U (Tab A-4, ¶ 29).

C. *Determination of Eligible Students*

35. Consistent with the Act and the applicable Title I regulations, the Board has developed procedures for

determining which public and nonpublic school students qualify for Title I remedial services. Two factors are taken into account in the eligibility determination: low income and demonstrated educational deprivation. Def. Exh. U (Tab A-4, ¶ 17).

36. The first of those requirements—economic disadvantage—is satisfied if a student lives in a "target public school attendance area" with a high concentration of children from low-income families. Def. Exh. U (Tab A-4, ¶ 18). In New York City, that determination is made annually on the basis of whether a public school attendance area—elementary, intermediate or high school—has a percentage of school-age children living at or below the poverty level that is the same as or greater than the city-wide percentage of such children. *Id.* The city-wide poverty percentage is determined by a two-step process.

(a) First, the Board determines the total number of New York City children, ages 5 through 17, who are carried on the rolls of the Aid to Families with Dependent Children ("AFDC") program. To be eligible for AFDC assistance, a New York City family of four must have an annual income of less than $5,712. The AFDC total is then weighted as 60 percent. To this figure is added the total number of New York City children who participate in the federal free lunch program, weighted at 40 percent. Eligibility for this aid program is based on a sliding scale of family income and family size. Weighted figures are used in an attempt to reduce duplication in the calculation of poverty.

(b) Second, the Board devises the sums of the weighted AFDC and federal free lunch program totals by the total number of New York City public school children. The resulting figure is the city-wide target attendance area low-income percentage. Def. Exh. U (Tab A-4, ¶ 19).

37. For the 1981-1982 school year, the city-wide cut-off poverty percentage was 45.76 percent. That figure was arrived at by the following computation:

$$\frac{326{,}014 \times 60\% + 521{,}867 \times 40\%}{883{,}568} = \frac{404{,}354}{883{,}568} = 45.76\%$$

Thus, any public school attendance area which had a poverty percentage equal to or higher than 45.76 percent was designated as an ESEA Title I target attendance area. Supplementary Affidavit of Lawrence F. Larkin ¶ 11.

38. The procedure for determining the poverty percentage for individual school attendance areas is identical to that used in computing the city-wide poverty percentage. The sum of the weighted AFDC and federal free lunch program totals is divided by the number of public school students on the register of the school. There are more than 900 public school attendance areas in New York City and, for the 1981-1982 school year, 561 of those areas were designated as Title I target attendance areas. *Id.* at ¶ 11.

39. Under the Board's guidelines, a student, whether he attends a public or a nonpublic school, must live within a target public school attendance area to satisfy the economic disadvantage criteria for Title I eligibility. That requirement is not satisfied if the student lives outside a target public school attendance area but attends a school within an adjacent target public school attendance area. Consequently, residency within a designated low-income neighborhood is an indispensable threshold eligibility requirement. For that reason, Title I remedial services follow the student, and eligibility for those services bears no relationship to the location of a school or whether a student attends a public or a nonpublic school. Def. Exh. U (Tab A-4, ¶ 22).

40. The second Title I eligibility requirement—educational deprivation—is based on a determination that a student is performing below a stipulated competency level on standardized tests in reading or shows other evidence of educational disadvantage. This condition applies equally to public and nonpublic school students. Un-

der the Board's procedures, a student must satisfy one of the three following criteria to be considered educationally deprived:

(a) a performance level below minimum competency in reading as measured by achievement under the 24th percentile on the New York State Pupil Evaluation Program tests or by the equivalent total reading score on the Metropolitan Achievement Test or Science Research Associates test;

(b) identification as non-English-speaking as determined by a ranking of "C" or below on the New York City Scale, "Rating Oral Language Ability"; or

(c) identification as a "handicapped child" according to the definition provided by the United States Commissioner of Education. Def. Exh. U (Tab A-4, ¶ 23).

41. Based on the dual eligibility criteria, a total of 302,382 public and nonpublic school students were eligible for Title I services during the 1981-1982 school year. Supplementary Affidavit of Lawrence F. Larkin ¶ 9. Under the New York City program, there are no exceptions to the rule that no public or nonpublic school student may receive Title I remedial services unless he meets both the poverty and learning disability requirements. The type of school attended by the student—whether public or nonpublic, church-related or non-church-related—is irrelevant in determining a student's entitlement to Title I services. Title I eligibility standards are religiously neutral. Def. Exh. U (Tab A-4, ¶ 25).

D. *Funding New York City's Title I Program*

42. New York City receives an annual allocation of Title I funds from the New York State Education Department on the basis of a county-by-county calculation of the number of eligible children below the poverty level, plus other eligible children in institutions and foster homes. To determine New York City's share of the Title I funds allotted to the State, the State Educa-

tion Department uses the census count of low-income children and the AFDC program rosters of the New York City Department of Social Services. To arrive at the *per capita* share, the State Education Department divides the number of eligible children in the City into the State's overall allocation from the United States Office of Education. Def. Exh. U (Tab A-4, ¶ 30).

43. To meet its obligation to provide equitable and comparable Title I services to nonpublic school students, the Board allocates available Title I funds between public and nonpublic school children according to a *per capita* formula based on the total number of public and nonpublic school students eligible for Title I services. The amount of Title I funds allocated to nonpublic school students is based only on the percentage of those students who meet the statutory qualifications of economic and educational disadvantage and not on the total number of students enrolled in nonpublic schools in New York City. Def. Exh. U (Tab A-4, ¶ 33).

44. Although all nonpublic school students who are statutorily eligible to participate in the program are counted in the allocation of Title I funds between public and nonpublic school students, budgetary and logistical problems make it impossible to provide Title I services to all of those eligible nonpublic school students. Similar problems make it impossible to provide Title I remedial services to all eligible public school students. However, the amount of money allocated by the Board for each eligible public and nonpublic school student is equivalent. Def. Exh. U (Tab A-4, ¶¶ 34-35, 38).

45. The initial determination of how many of the eligible nonpublic school students will receive Title I remedial services is based on the number of teachers and other professionals who can be hired from available funds. Determining which of the eligible students receive the services then depends on the number of eligible students in a particular school and the administrative feasibility of assigning one or more teachers or professionals to that school. Def. Exh. U (Tab A-4, ¶ 35).

46. The average salary and benefits paid to teachers assigned to the nonpublic school Title I program for the 1981-1982 school year is $37,921. Supplementary Affidavit of Lawrence F. Larkin ¶ 8. Eight years ago, when large numbers of part-time teachers were employed, the average cost was $12,000. The number of Title I professionals assigned to the nonpublic school Title I program has decreased from approximatley 700 to 532 during those eight years. *Id.*; Def. Exh. U (Tab A-4, ¶ 37).

E. *Available Title I Services*

47. Consistent with the statutory and regulatory scheme of Title I, no public funds are disbursed to nonpublic schools under the New York City program. Rather, the Board provides five types of remedial services to nonpublic school students who satisfy Title I eligibility criteria. The services provided are remedial reading, a reading skills center, remedial mathematics, English as a second language, and clinical and guidance services. Def. Exh. U (Tab A-4, ¶ 39). Those services are provided by teachers and support professionals who are employees of the Board and subject solely to the supervision and control of the Board. *Id.* at ¶ 52.

48. In determining the types of remedial services to be provided to nonpublic school students under Title I, the Board has been guided by the statutory requirement that those services supplement, and not supplant, instruction and instructional services already being provided by the nonpublic schools themselves. Thus, in a 1966 resolution, the Board decided against providing speech improvement and library services for nonpublic school students under Title I because those services might be construed as being outside of the limited area of remedial and therapeutic services and might constitute services to institutions rather than to children. Def. Exh. L. As a result, no form of remedial services for nonpublic school students under Title I has been provided until a determination has been made that the particular services are

not being provided by the nonpublic schools. Def. Exh. U (Tab A-4, ¶ 40).

49. With the exception of the clinical and guidance program, the several remedial programs available to nonpublic school students are designed to provide instructional services by specially trained remedial teachers to poor and educationally disadvantaged children to assist them in improving their skills in the English language, reading and mathematics.

(a) The remedial reading program is designed to supplement the students' regular reading program and to raise the achievement levels of students in grades one through twelve who are reading one or more years below their grade level.

(b) The reading skills center program provides more intensive remedial reading instruction for students in grades four through eight whose reading achievement levels are as much as five years below grade level.

(c) The remedial mathematics program offers remedial instruction to students in grades one through twelve whose scores on standardized tests show them to be six months or more below grade level in mathematics.

(d) The English as a second language program is designed primarily for very young children or students who have recently arrived in the United States. That program provides basic instruction in the English language, with emphasis on oral proficiency, to enable the students to achieve the competency and fluency in the English language which is necessary for them to participate effectively in regular instructional programs. Def. Exh. U (Tab A-4, ¶¶ 42-46).

50. The clinical and guidance program involves support services by guidance counselors, school psychologists, social workers and psychiatrists. The support services are available only to students actually enrolled in Title I instructional programs. The clinical and guidance program is designed to enhance student achievement in the Title I instructional programs by providing diagnosis and

treatment for those students who, because of emotional and related problems, are not making expected progress in the remedial instruction programs. The success of this support program is evaluated in terms of whether students perform better in the Title I instructional programs. Def. Exh. U (Tab A-4, ¶ 47).

51. The Title I instructional services are generally provided to groups of about 10 students with an emphasis on individualized instruction. The classes meet at least once a week and, in cases of serious learning deficiencies, they meet as often as five times per week. These remedial services are designed primarily to reach children in grades one through six, but students in the higher grades with significant learning difficulties will be provided services if teachers are available. A Title I teacher ordinarily works with no more than 100 students during a five-day work week. Def. Exh. U (Tab A-4, ¶¶ 49-50). The affidavits of 29 Title I teachers and their supervisors describe the Title I instructional programs in considerable detail. *See* Def. Exh. U (Tabs A-5 to A-32).

52. The clinical and guidance professionals provide diagnostic testing, consultation and counseling services on an individual basis. Guidance counselors will occasionally provide services in group sessions when children in the group are experiencing common problems. The affidavits of several clinical and guidance professionals and their supervisors provide a detailed description of the types of services they provide to students in nonpublic school Title I instructional programs. *See* Def. Exh. U (Tabs A-33 to A-46).

F. *Hiring and Assignment Policies*

53. The teachers and other professionals who provide Title I remedial services to nonpublic school students are regular salaried employees of the Board. In all respects, they are similar to their counterparts teaching in regular classrooms or Title I programs in the public schools. All

teachers and other professionals employed by the Board, whether they are assigned to the nonpublic school Title I program or to public school programs, are subject to the provisions of the employment contract negotiated and executed by the Board and the United Federation of Teachers, must have an appropriate license from the Board, and are subject to the sole control and supervision of the Board. The Board's Division of Personnel is responsible for hiring and assigning teachers and other professionals to the nonpublic school Title I program. *See generally* Def. Exh. U (Tab A-3).

54. When the Title I program was first implemented, New York City was experiencing a shortage of qualified teachers. To avoid reassigning teachers from the public schools, the Board adopted a policy in 1966 of appointing only substitute teachers to the nonpublic school Title I program. That preference for the substitute teachers continued until September 1975, when New York's fiscal crisis drastically altered the assignment procedures for all teachers in the New York City public school system. Def. Exh. U (Tab A-3, ¶¶ 29-35).

55. Because of the fiscal crisis, the Board laid off some 20,000 persons, including 9,000 regularly appointed teachers and supervisors. Under the Board's contract with the United Federation of Teachers, the Board was required to offer available teaching positions to those regularly appointed teachers who had the most seniority. Those with less seniority were "excessed" and placed on a list of qualified and available teachers, ranked according to their seniority. Further layoffs in September 1976 added to the number of persons on the "excess" list. As new teaching positions became available after the "excess" list was established, those positions were offered to the teachers on the list with the most seniority. Most appointments of teachers to the nonpublic school Title I program were made from the "excess" list. After September 1978, teachers have been appointed to that program based on

their seniority on standard eligibility lists. Def. Exh. U (Tab A-3, ¶¶ 31-37).

56. Teachers and other professionals referred to the nonpublic school Title I program by the Division of Personnel are interviewed by the coordinator of the particular remedial program in which vacancies exist. Assignment to the nonpublic school Title I program is purely voluntary. If, for any reason, a teacher prefers not to work in a nonpublic school setting, he may refuse appointment to the program and not lose his seniority position on existing eligibility lists. Def. Exh. U (Tab A-4, ¶ 54).

57. The data collected by the Division of Personnel on teachers working in the New York City school system or applicants for positions in the system does not include any information concerning a person's religious affiliation. Def. Exh. U (Tab A-3, ¶ 37). The coordinators who interview persons referred to the nonpublic school Title I program make no inquiry concerning the person's religious affiliation or beliefs during the interview. For those reasons, the religious affiliation of a teacher, or the lack of any such religious affiliation, has no bearing on the decision to appoint the teacher to the nonpublic school Title I program or on the assignment of teachers and other professionals to particular nonpublic schools whose students receive Title I remedial services. Def. Exh. U (Tab A-4, ¶¶ 55-56).

58. Once a teacher or other professional is appointed to the nonpublic school Title I program, the determination of which nonpublic schools the teacher or other professional will work in is made solely by the administrators of the Bureau of Nonpublic School Reimbursable Services. Nonpublic school officials have no voice in the initial assignment of a Title I teacher or other professional. There is no known instance of any non-public school principal requesting or refusing the initial assignment of a Title I teacher or other professional on religious grounds or for any other reason. Def. Exh. U (Tab A-4, ¶ 56).

59. The administrators of the Bureau of Nonpublic School Reimbursable Services are solely responsible for decisions involving the reassignment, transfer, discipline or discharge of Title I teachers and other professionals. No reassignments or transfers will be made during a school year. There is no known instance of any nonpublic school official requesting the reassignment or transfer of a Title I teacher or other professional on religious grounds. No teacher or other professional has sought reassignment to a different nonpublic school or a transfer out of the nonpublic school Title I program for religious reasons. Def. Exh. U (Tab A-4, ¶ 57).

60. The amount of time that a particular Title I teacher or other professional will spend at any one nonpublic school is determined by the number of students at that school who are eligible for and in need of particular remedial services. Def. Exh. U (Tab A-4, ¶ 58). The vast majority of Title I teachers and other professionals are itinerant. During the 1981-1982 school year, approximately 78 percent of all Title I teachers and other professionals spent less than five days a week at the same nonpublic school and worked in more than one nonpublic school. Children in 180 of the 231 nonpublic schools with Title I services received those services from itinerant teachers or support professionals. All social workers, psychologists and psychiatrists in the nonpublic school Title I program are itinerant. Supplementary Affidavit of Lawrence F. Larkin ¶ 8.

61. Although the Board maintains no record of the religious affiliations of the teachers and other professionals assigned to the nonpublic school Title I program, the affidavits of Title I teachers demonstrate that the vast majority of them work in nonpublic schools with religious affiliations different from their own. Def. Exh. U (Tabs A-7 to A-15, A-17 and A-18, A-20 to A-26, A-28 to A-32, A-36 to A-46). A total of 73.5 percent of those persons are of a different religious faith than the schools to which they were assigned, and another 17.7 percent

work in at least one nonpublic school with religious affiliations different from their own.

G. *Restrictions on Teaching Activities*

62. Each teacher and support professional assigned to the nonpublic school Title I program is provided with a set of detailed written instructions by the Bureau of Nonpublic School Reimbursable Services which delineates his responsibilities in the program and the restrictions imposed on his activities. Def. Exh. U (Tab A-4, ¶¶ 28, 62). Those written guidelines are supplemented regularly by oral instructions provided during regular in-service training programs. *Id.* at ¶ 63. The restrictions set forth in those written and oral instructions are consistent with the restrictions set forth in the Title I regulations issued by the Office of Education. *Id.* at ¶ 28. Copies of the written guidelines given to Title I teachers are marked as Def. Exhs. D, E and F.

63. The written and oral instructions emphasize the independence of Title I teachers and other professionals from nonpublic school authorities. Among other things, those instructions stress:

(a) Title I teachers and other professionals are accountable only to their Title I supervisors and are not subject to the supervision of any nonpublic school officials. *E.g.*, Def. Exh. F, p. 136; Def. Exh. U (Tabs A-8, ¶ 8; A-40, ¶ 9).

(b) Title I teachers and other professionals are assigned to a nonpublic school only to provide services to those students who meet the Title I eligibility criteria of economic and educational disadvantage. *E.g.*, Def. Exh. F, p. 130; Def. Exh. U (Tabs A-14, ¶ 9; A-28, ¶ 8).

(c) The Title I teachers and other professionals, while they may consult with nonpublic school teachers and administrators on the educational needs of eligible Title I students, are solely responsible for the selection of stu-

dents who participate in the program. *E.g.*, Def. Exh. F, pp. 107-08; Def. Exh. U (Tabs A-11, ¶ 11; A-21, ¶ 12).

(d) Title I teachers and other professionals must administer their own standardized tests to each child tentatively selected to receive services, and not rely on tests administered by the nonpublic schools, to assure that the students finally selected meet the requirement of educational deprivation. *E.g.*, Def. Exh. F, pp. 210-19.

(e) Title I teachers and other professionals must take all necessary steps to assure that materials and equipment provided them for their Title I activities are used only in connection with the Title I program and are not diverted for use in the regular instructional program of the nonpublic school. *E.g.*, Def. Exh. F, p. 3; Def. Exh. U (Tabs A-9, ¶ 9; A-20, ¶ 8).

(f) Title I teachers and other professionals are not to engage in team-teaching or any other cooperative instructional activities with nonpublic school teachers. *E.g.*, Def. Exh. F, p. 135; Def. Exh. U (Tabs A-11, ¶ 17, A-17, ¶ 19).

(g) Title I teachers and other professionals are not to become involved in any way with the religious activities of the nonpublic schools and are not to introduce any religious matter into their teaching. Def. Exh. U (Tab A-4, ¶ 69).

64. An effective remedial educational program requires that the remedial teacher be aware of a student's response to his total educational environment. Title I teachers work with their students in groups of 10 or less, an educational setting which is quite different from the students' normal classroom environment. To understand how the student responds in the normal classroom environment, therefore, it is necessary for the Title I teacher to confer with the regular classroom teachers of the nonpublic schools concerning the students' needs and progress in that classroom environment. Such consultations are essential to an effective remedial education

program. *See, eg.*, Def. Exh. F, pp. 1-3. However, the Title I teachers are instructed to confine those consultations with regular classroom teachers to mutual professional concerns about the students' educational needs and not to engage in any discussion of matters of a religious nature. *E.g.*, Def. Exh. U (Tabs A-4, ¶¶ 68-69, 71; A-14, ¶ 16; A-36, ¶ 19).

65. There is no known instance of any Title I teacher or other professional becoming involved in the religious activities of nonpublic schools, introducing religious topics into his remedial instruction or counseling activities, or being pressured by nonpublic school principals or teachers to violate the explicit restrictions on the total separation of the purely secular Title I program and the religious functions of the nonpublic schools. The sole concern of the teachers and other professionals assigned to the nonpublic school Title I program is to provide a program of remedial instruction and services which is professionally comparable to that provided to students in the public schools of New York City. *See, e.g.*, Def. Exh. U (Tabs A-4, ¶ 70; A-25, ¶ 15; A-36, ¶ 22); Supplementary Affidavit of Lawrence F. Larkin ¶ 5.

H. *Supervision of Title I Professionals*

66. The Bureau of Nonpublic School Reimbursable Services has developed a comprehensive program of supervising, monitoring and evaluating the nonpublic school Title I program to ensure that Title I teachers and support professionals assigned to the nonpublic school program provide a quality program of remedial services and comply with all of the guidelines for that program, including the restrictions on their activities. Def. Exh. U (Tab A-4, ¶ 73).

67. Program supervision is the responsibility of the coordinators and supervisors of each of the five components of the nonpublic school Title I program. Def. Exh. U (Tabs A-4, ¶ 74; A-5, A-6, A-16, A-19, A-27, A-33, A-34, A-35).

68. The field supervisors serve essentially as itinerant evaluators and instructors of Title I teachers and other professionals at the nonpublic schools to which they have been assigned. A field supervisor is ordinarily responsible for 22 Title I teachers and attempts to make at least one unannounced visit to each teacher each month. Those visits will be more frequent for those teachers who are new to the program. *E.g.*, Def. Exh. U (Tabs A-4, ¶ 75; A-6).

69. During the unannounced visits, field supervisors evaluate the teachers' classroom performance, paying particular attention to the teachers' mastery of innovative remedial teaching techniques and familiarity with new materials and equipment. The field supervisors and teachers also discuss the problems and progress of particular students and the best way to deal with particular learning disabilities. This relationship between field supervisors and Title I teachers is highly professional. *E.g.*, Def. Exh. U (Tabs A-4, ¶¶ 76-78; A-6).

70. While the primary purpose of the field visits is to evaluate a teacher's performance and to provide an opportunity for consultation among peers, field supervisors are trained to be sensitive to the need for strict compliance by Title I teachers with those restrictions which are designed to achieve a total separation of Title I activities from the regular instructional programs of the nonpublic schools. Def. Exh. U (Tab A-4, ¶ 78). There is no known instance of Title I teachers and support professionals breaching those restrictions. *See generally* Def. Exh. U (Tabs A-5 to A-46); Supplementary Affidavit of Lawrence F. Larkin ¶ 5.

71. The affidavits of Title I teachers and support professionals uniformly attest to the fact that they are subject solely to the supervision of employees of the Board working in the nonpublic school Title I program. None has ever been subjected to any form of supervision by any nonpublic school employees. Def. Exh. U (Tabs

A-7 to A-15, A-17 and A-18, A-20 to A-26, A-28 to A-32, A-36 to A-46).

72. Program coordinators, who report directly to the Director of the Bureau of Nonpublic School Reimbursable Services, oversee the activities of the field supervisors. The coordinators are responsible for enforcing the general guidelines applicable to the nonpublic school Title I program and for ensuring that the program objectives are being met by the teachers under their direction. Coordinators will make occasional unannounced field visits to observe Title I teachers in the nonpublic schools. However, one of their principal methods of carrying out their responsibilities is through monthly in-service training sessions. Those sessions are frequently held on days when the public schools are in session but when the nonpublic schools have a religious holiday. The in-service training sessions permit the coordinators to review new techniques of remedial education and to review on a regular basis the guidelines for and restrictions on the nonpublic school Title I program. Def. Exh. U (Tabs A-4, ¶¶ 79-81; A-5, A-16, A-19, A-27, A-33, A-34).

73. Monitoring of the nonpublic school Title I program also is a function of persons outside of the supervision and control of the Bureau of Nonpublic School Reimbursable Services. For example, representatives of Chancellor Macchiarola's Monitoring Task Force and the New York State Education Department will periodically make unannounced visits to Title I classrooms to monitor the extent to which the program goals stated in the annual written Title I plan are being achieved. In addition, representatives from the United States Office of Education from time to time make inspection visits to the Title I classrooms. These monitoring activities provide an additional means for assuring that Title I teachers and other professionals are complying with the program guidelines and restrictions. Def. Exh. U (Tab A-4, ¶ 82).

74. Finally, the Board's guidelines require that an independent professional evaluator be employed annually to

review each of the Title I services provided to nonpublic school students. The evaluators examine the operation of the program and review test results to determine the effectiveness of the program in helping children to overcome learning disabilities. As part of their review, the evaluators visit Title I classrooms to observe how they are conducted. During the entire history of the nonpublic school Title I program, no evaluation report has contained any suggestion that Title I teachers deviate from the restrictions on their teaching activities or engage in any form of religious activity. Def. Exh. U (Tab A-4, ¶¶ 83-85); Supplementary Affidavit of Lawrence F. Larkin ¶ 5. The most recent written evaluation reports are for the 1979-80 school year and are included as Exhibits A to E to the Supplementary Affidavit of Lawrence F. Larkin.

I. *Title I Equipment and Materials*

75. A small portion of the budget for the nonpublic school Title I program is used annually to purchase materials and equipment necessary for teachers and other professionals to provide an effective remedial education program. For the 1981-1982 school year, only $570,344 was budgeted for materials and equipment. Supplementary Affidavit of Lawrence F. Larkin ¶ 10. The statute expressly contemplates that a portion of Title I funds will be used for such expenditures. 20 U.S.C.A. § 2734(a).

76. Some 95.3 percent of the instructional equipment and materials budget for the nonpublic school Title I program was allocated for the purchase of remedial teaching materials used by Title I instructors in their classrooms. These materials include dictionaries, consumable workbooks, textbooks, storybooks, teacher reference books, teaching games, standardized tests, measurement materials such as cuisenaire rods, rulers, and scales, capacity containers, metric learning tools, pictures, periodicals,

puppets, and audio-visual materials such as films, filmstrips, tapes, transparencies and recordings. Supplementary Affidavit of Lawrence F. Larkin ¶ 10.

77. The remainder of the equipment and materials budget was used for the purchase and rental of equipment. The equipment includes lockable storage and filing cabinets, desks, chairs, audio-visual equipment, tables, bookcases, duplicating machines, portable chalkboards, tape recorders, earphones, language master machines, and microfiche machines. Def. Exh. U (Tab A-4, ¶ 88).

78. All such materials and equipment are selected by the coordinators and supervisors of the five nonpublic school Title I programs on the standard requisition form of the Board's Bureau of Supplies. Def. Exh. G. The same procedures are used to obtain equipment and materials for regular public school classrooms and the public school Title I program. Def. Exh. U (Tab A-4, ¶ 89).

79. The various teaching materials used in the nonpublic school Title I program are selected on the basis of their relevance to the special needs of educationally disadvantaged or handicapped children. Def. Exh. U (Tab A-4, ¶ 90). Under the program guidelines, those materials must be appropriate for use in a remedial program and must not duplicate materials used in regular classroom instruction in the nonpublic schools. *E.g.*, Def. Exh. F, p. 136.

80. None of the teaching materials used in the nonpublic school Title I program has any religious content. In fact, many of those materials are designed to require a minimum of teacher direction to stimulate each student to work on his own toward improving his ability. The strictly secular content of the teaching materials and the emphasis on self-direction in the remedial programs virtually eliminates the possibility that religious content will find its way into the nonpublic school Title I program. Def. Exh. U (Tab A-4, ¶ 91).

81. Consistent with the Title I regulations, the Bureau of Nonpublic School Reimbursable Services has taken

steps to ensure that materials and equipment are used only in connection with the nonpublic school Title I program and will not inure to the benefit of nonpublic schools. *See* 34 C.F.R. § 76.661(c). All materials and equipment, at the time of acquisition, are clearly labeled as the property of the Board and as being for use in the Title I program. *See* Def. Exh. F, p. 351; Def. Exh. U (Tab A-4, ¶¶ 93-94). Title I teachers and other professionals are instructed that, when the materials and equipment are not in use, they should be locked in storage and filing cabinets. Def. Exh. U (Tab A-4, ¶ 95). Each item of equipment and material is subject to an annual inventory (*see* Def. Exh. J) and the Bureau of Nonpublic School Reimbursable Services makes follow-up inquiries when the inventory fails to account for specific items of equipment and materials. While the Board is empowered to terminate a Title I program at any nonpublic school at which Title I equipment and materials are diverted for use by the school in its regular instructional program, the Board has encountered no incident that has required it to exercise those powers. Def. Exh. U (Tab A-4, ¶ 98).

82. Under Title I and under regulations issued by the Office of Education and the Board, no Title I funds may be paid to nonpublic schools to finance salaries of regular classroom teachers or to construct nonpublic school facilities. 34 C.F.R. §§ 76.658, 76.622. The Board has consistently observed those restrictions. Def. Exh. U (Tab A-4, ¶ 99); Supplementary Affidavit of Lawrence F. Larkin ¶ 5.

J. *Title I Classrooms and Facilities*

83. Regulations issued by the United States Office of Education authorize the assignment of public school teachers to nonpublic schools "[t]o the extent necessary to provide equitable program benefits" to nonpublic school children. 34 C.F.R. § 76.659.

84. Pursuant to those regulations and for reasons explained more fully in paragraphs 100 through 109 below, the Board has determined as a matter of sound educational policy that Title I remedial and support services can be provided most effectively to eligible children only on the premises of the schools they regularly attend. For that reason, the Office of Special Projects, like its counterparts for public school children, assigns teachers to provide Title I services during regular school hours at the nonpublic schools attended by eligible students. Def. Exh. U (Tab A-4, ¶ 101).

85. Before the Office of Special Projects approves the assignment of Title I teachers or other professionals to a particular nonpublic school, an administrator of the Bureau visits the school to ensure that the facilities to be used for Title I instruction and support services meet all health and safety requirements of the Board. During those visits, the administrator informs the nonpublic school principal of all federal, state and local guidelines governing the Title I program, including the requirement that any room used for Title I instruction or support services be free of all religious symbols and artifacts. Def. Exh. U (Tab A-4, ¶ 102).

86. Nonpublic schools with children receiving Title I instructional services typically reserve a classroom for the exclusive use of Title I teachers. In those few nonpublic schools in which a Title I teacher spends five days a week, the Title I classroom is used only by that teacher. In the majority of the schools where several itinerant Title I teachers work from one to three days a week, the reserved classroom facilities are available for those teachers. Def. Exh. U (Tab A-4, ¶ 103).

87. With one exception, clinical and guidance professionals are itinerant, ordinarily spending only one or two days at any particular school. Those Title I staff members customarily use the nurse's room or a comparable facility at the nonpublic school. Those facilities are not used for any instructional purposes, and they provide

the necessary privacy for confidential discussions with students and parents. Def. Exh. U (Tab A-4, ¶ 104).

88. None of the nonpublic school facilities used for Title I remedial instruction or support services contains any religious statutes, symbols, pictures or artifacts. *E.g.*, Def. Exh. U (Tabs A-4, ¶ 105; A-10, ¶ 19; A-25, ¶ 21; A-31, ¶ 17). Those facilities are separate and distinct from the facilities used by the nonpublic schools for their own instructional activities. Typically, a Title I classroom has a hand-lettered sign on the door identifying it as a facility reserved for Title I remedial activities. *See, e.g.*, Def. Exh. F, p. 116. In effect, the Title I facility is a public school within the nonpublic school, unaffected by the fact that the nonpublic school may be sponsored by or affiliated with a religious denomination. Def. Exh. U (Tab A-4, ¶¶ 106-07).

K. *Administrative Contacts with Nonpublic Schools*

89. The day-to-day administration of the nonpublic school Title I program by the Office of Special Projects involves only routine communications with nonpublic school officials and does not involve the Office in the internal affairs of nonpublic schools. By the same token, those communications give nonpublic school authorities no control or authority over the internal decisions of the Office concerning the implementation of the nonpublic school Title I program. Def. Exh. U (Tab A-4, ¶ 115). The administrative relationships between the Bureau and nonpublic school officials fall into three general categories: disseminating information, processing requests for services, and resolving questions concerning the implementation of the program. *Id.* at ¶ 116.

90. To ensure that there will be full cooperation by nonpublic school officials, the Office of Special Projects makes it a practice to keep those authorites [sic] fully informed about the nonpublic school Title I program. In particular, the administrators of the Office disseminate

information to and hold orientation conferences for the nonpublic school principals about the following matters: the purpose of the Title I remedial education programs, the types of services available, the criteria for determining economic and educational disadvantage, considerations used in selecting those eligible students who receive services, the procedures for requesting services, the applicable guidelines for and restrictions on the program, and the policies and procedures for assigning Title I teachers and other professionals. Def. Exh. U (Tab A-4, ¶ 117). Most of that information is disseminated through conferences held at the Office, bulletins and newsletters sent by mail (see Def. Exh. L), and telephone calls between administrators of the Bureau and nonpublic school principals. Def. Exh. U (Tab A-4, ¶ 118).

91. The second type of administrative contact—processing requests for services—involves little more than a "paper relationship", in the sense that nonpublic school principals fill out, and employees of the Board review, two standardized forms. That process is substantially similar to that followed by public school principals in requesting Title I services for their students. Def. Exh. U (Tab A-4, ¶ 119).

92. Each spring the Board's Office of Educational Statistics sends to the principal of each of the 918 nonpublic schools in New York City a form entitled "Survey of E.S.E.A. Title I Eligible Non Public School Pupils." *See* Def. Exh. B. This form requests information concerning students' addresses, scores on standardized achievement tests and, in the case of handicapped children, the type of handicapping condition (such as mental retardation, visual impairment or deafness).

93. The Office of Educational Statistics uses the information on the survey forms to make a preliminary determination of which students are below the minimum competency level in their performance on standardized tests and who live in target public school attendance areas

with high concentrations of low-income residents. On the basis of those determinations, the Office of Educational Statistics prepares a roster of students who meet the threshhold [sic] eligibility requirements for Title I remedial services. A copy of those rosters is sent to the Bureau of Nonpublic School Services and nonpublic school principals. Def. Exh. U (Tab A-4, ¶ 121).

94. Those rosters permit the nonpublic school principals to complete a second form which is known as a "Request for ESEA Title I Central Remedial Services for Eligible Nonpublic School Pupils," and which is submitted to the Office of Special Projects. Def. Exh. C. These forms are submitted by the principals on behalf of students who are potential recipients of Title I remedial services and contain information about the extent of the students' performance below grade level in the areas of reading, mathematics and oral fluency in English. On the basis of that data, nonpublic school principals request a certain number of days per week of Title I remedial services in the five programs provided to nonpublic school students. Def. Exh. U (Tab A-4, ¶¶ 122-23).

95. After receiving the request forms from the nonpublic school principals, the Office of Special Projects allocates positions for teachers at the nonpublic schools on the basis of available funds, the total number of nonpublic school students who will actually receive services, and the administrative feasibility of assigning teachers or other professionals in light of the number of eligible participating students at particular nonpublic schools. Def. Exh. U (Tab A-4, ¶ 124).

96. The third type of administrative contact—resolving questions about program implementation—is primarily *ad hoc*. The questions directed to the Office of Special Projects most commonly relate to scheduling and related problems. Those questions never involve matters of a religious nature. Def. Exh. U (Tab A-4, ¶ 125).

97. In the course of these various administrative contacts between the administrators of the Office of Special

Projects and nonpublic school principals, the principals have occasionally criticized the Title I program. The most common criticisms have involved delays in implementing services at the beginning of a school year or delays in notifying the principals about the number of eligible students to whom the services will be provided in a particular year. None of these criticisms has ever involved allegations of interference by the Board or its personnel with the nonpublic schools' control over their internal affairs, curriculum, course content, or faculty qualifications or performance. Nor has there been any suggestion in those criticisms that the nonpublic schools were attempting to exercise any control over the nonpublic school Title I program or supervisory authority over teachers and other professionals assigned to that program. Def. Exh. U (Tab A-4, ¶ 114). Several principals of church-related schools at which Title I services are provided have submitted affidavits. Def. Exh. U (Tabs A-49 to A-54). In addition to giving a brief description of the schools, these affidavits describe the principals' perceptions of the Title I program as an independent form of secular remedial education for some of their students, as well as the relationship of their schools and themselves to the program and its administration.

98. The Office of Special Projects, as the agent of the Board responsible for implementing the nonpublic Title I program, is responsible for the welfare of all children participating in the program. On rare occasions, the Bureau has been required to exercise its power to terminate or suspend services to a small number of nonpublic schools which fail to comply with health and safety code requirements. In each instance that the power was exercised, the nonpublic school quickly remedied the problem and services were resumed. At no time has the Office terminated or suspended Title I services because of religious abuses or interference by nonpublic school officials with Title I teaching and supervisory activities. Def. Exh. U (Tab A-4, ¶¶ 126-27).

99. The experience with these various forms of administrative contacts between officials of the Board and administrators of nonpublic schools in New York City has confirmed the following observation by the United States Office of Education:

> "Title I creates the unusual situation in which an educational program may operate within the private school structure but be totally removed from the administrative control and responsibility of the private school." *United States Office of Education (USOE) Program Guide No. 44* (1968), *reproduced in Title I ESEA, Participation of Private School Children, A Handbook for State and Local Officials*, U.S. Department of Health, Education and Welfare, Publication No. (OE) 72-62, p. 8 (1971).

L. *Reasons for On-Premises Services*

100. The Board made the decision to provide Title I instructional and support services to nonpublic school students at their schools during regular school hours only after experimenting with alternative programs. During the first academic year that Title I funds were available to the Board, the Board attempted to provide services to nonpublic school students after regular school hours both at public schools and at nonpublic schools. The experiment, in the Board's view, was a total failure. Def. Exh. U (Tab A-4, ¶ 135).

101. Within a few months of the enactment of Title I, the Board authorized a pilot Title I program for nonpublic school students. Initially, students selected for participation in the program were required to travel to public schools after regular school hours to receive remedial services from regular public school employees. When attendance lagged in that program, the Board transferred some Title I services to nonpublic schools after regular school hours, shifting the burden of transportation to the public school teachers, while maintaining

other services at off-premises sites. Attendance was also poor after that change was made, and the Board found common problems in both alternatives. Def. Exh. U (Tab A-4, ¶¶ 136-37).

102. Because both the off-premises and on-premises programs were conducted at the end of the regular school day, both the students and teachers were tired. The students' fatigue made them far less receptive to the highly intensive nature of remedial instruction, and they failed to show noticeable improvement in the skills in which they were deficient. Moreover, there was justifiable parental concern about the safety of children traveling home after dark or in inclement weather during the late fall, winter and early spring months. Finally, communication between Title I teachers and other professionals and the regular classroom teachers of the nonpublic school students was virtually impossible after the regular nonpublic school day ended. Def. Exh. U (Tab A-4, ¶ 136).

103. The only other alternative to a program on the premises of nonpublic schools during the regular school day was to offer Title I services to nonpublic school students at public schools during the regular school day. However, under Article XI, Section 306 of the New York State Constitution, there were serious questions concerning whether nonpublic school students could participate with public school students in programs conducted on public school premises during regular school hours. Because of those legal problems and because poor attendance in the after-hours programs had demonstrated that nonpublic school students were not receiving Title I benefits comparable in scope and quality to those received by public school students, the Board adopted the only practical alternative—a program on the premises of nonpublic schools during regular school hours. Def. Exh. L.

104. On August 31, 1966, the Board adopted a resolution approving that new method of providing Title I services to nonpublic school students. The Board's resolution and accompanying statement recited many of the

problems that had been encountered with the after-hours program as the reason for the new program. For example, the Board stated:

> "The Board's own experience in giving instruction of this character has demonstrated that the after-school centers are not as well attended as they should be by the students who need the most help. Moreover, the Board has learned by experience that remedial instruction by teachers specially assigned for the purpose should, to be as effective as possible, be carried on in frequent consultation with the regular class-room teachers of the children in question. Frequently, also, the children's records need to be looked at. All this would be difficult to manage in after-school centers, particularly when conducted on school premises other than the children's regular schools." Def. Exh. L, p. 3.

These and other reasons given by the Board for the failure of the after-hours program are remarkably similar to the findings of the Office of Education investigation team that provided the factual basis for implementing the Title I "bypass" program in four cities in Missouri. *See* paragraphs 21-27, *supra.*

105. In adopting the program in providing Title I services on the premises of nonpublic schools during regular school hours, the Board was sensitive to the restrictions necessary to ensure the secular integrity of the Title I program. For that reason, the Board was careful in selecting the types of services to be provided to eligible nonpublic school children. The Board's statement accompanying its August 31, 1966, resolution stated:

> "The Board . . . will provide the following services for educationally disadvantaged children in nonpublic schools, on their premises, during the school day: remedial reading, remedial arithmetic, speech therapy, and guidance counseling. The instruction

> will be given by peripatetic teachers, who will go from one school to another during particular periods; no teacher will be so assigned without his consent. The instruction will not duplicate any of the regular class-room work of the schools involved. Speech improvement instruction, for example, as distinguished from speech therapy (for stammering and other speech impediments), has been eliminated from the proposals as being too close to regular class-room work. Library services for non-public schools have likewise been eliminated as being outside the limited areas of remedial and therapeutic, and as constituting services to institutions more directly than to children." Def. Exh. L, p. 3.

Those criteria established by the Board in 1966 for determining the appropriateness of providing particular forms of services under Title I to nonpublic school students have been followed subsequently when new programs have been added for nonpublic school students. Def. Exh. U (Tab A-4, ¶ 40).

106. The necessity of providing Title I services to nonpublic school students on the premises of their schools during school hours is attested to in the many affidavits of Title I teachers, administrators, and parents submitted with this Narrative Summary. Included among the several pedagogical and practical reasons for the view specified in these affidavits are the need for consultation between the Title I teacher and the student's regular classroom teacher, the problem of student fatigue, receptivity, and attendance with respect to an after-hours program, and the problem of student security. *See, e.g.*, Def. Exh. U (Tabs A-5, A-13, A-18, A-21, A-30, A-34, A-35).

107. During the 1977-1978 school year, the Bureau of Nonpublic School Reimbursable Services analyzed the costs that would be incurred if the Title I program for

nonpublic school students were to be conducted at sites other than the nonpublic schools. Def. Exh. N. That analysis revealed the following:

(a) Using a random sample of six community school districts with 6,852 of the 33,977 eligible nonpublic school students, during the school year the survey concluded that 63 percent of those students would have to be provided transportation from their nonpublic school to the nearest convenient public school site. The cost of that transportation would necessarily have to come from that portion of the budget for the nonpublic school Title I program currently devoted to instructional services. Def. Exh. U (Tab A-4, ¶ 147).

(b) The cost of transportation, plus other non-instructional costs that would be incurred by the off-premises program, would amount to more than $4.2 million, which, for the 1977-1978 school year, would have been more than 42 percent of the total budget for the nonpublic school Title I program. Def. Exh. N.

(c) Because the Board could not have allocated an additional $4.2 million for the nonpublic school Title I program, those additional costs would have been met by that portion of the budget now devoted to instructional services. To meet those additional costs would have required the elimination of 167 teaching positions and a corresponding number of supervisory and other administrative positions. Such a reduction in professional staff would have meant the elimination of services to 5,039 students, or 36 percent of those who received Title I remedial services during the 1977-1978 school year. Def. Exh. N; Def. Exh. U (Tab A-4, ¶ 153).

108. An off-premises program that incurred non-instructional costs of $4.2 million and eliminated services to more than 5,000 nonpublic school students would not have been a program providing benefits comparable to those provided in the program of Title I services available to public school students in New York City. Def. Exh. U (Tab A-1, ¶ 16).

109. The conclusions of the study conducted by the Bureau of Nonpublic School Reimbursable Services parallel the experience of St. Louis, Missouri, during the 1975-1976 school year when it provided Title I services to nonpublic school students at five central locations after regular school hours. Those five central locations offered instructional services to 1,600 eligible nonpublic school students attending 23 nonpublic schools. That St. Louis Title I program for nonpublic school students incurred non-instructional costs of $286,181 out of a total program budget of $675,690. The noninstructional costs represented 42.5 percent of the total budget. Def. Exh. U (Tab A-4, ¶¶ 148-50).

110. Thus, the Board's own experience with an after-hours program during the first year that Title I was in operation and the magnitude of non-instructional costs that would be incurred by any form of off-premises program today demonstrate that there is no alternative to the present program of providing Title I services to nonpublic school students on the premises of their schools during regular school hours that would be comparable to the Title I services available to public school students in New York City.

M. *Accomplishments of the Title I Program*

111. During the 16 years that Title I services have been available in New York City, tens of thousands of economically and educationally disadvantaged nonpublic school students have participated in the program. Despite limited funds and rising costs, the Board has consistently attempted to assure that nonpublic school students would derive benefits from the program comparable to those enjoyed by public school students with similar economic and educational handicaps. Def. Exh. U (Tab A-4, ¶ 130).

112. Annual reports submitted by independent evaluators who have assessed the Title I program for nonpublic school students have consistently found that stu-

dents participating in the program show measurable improvement in overcoming their learning disabilities. The following is a summary from the reports for the 1975-1976 school year, *see* Def. Exhs. O to S, which describe the accomplishments noted by the evaluators who reviewed the nonpublic school Title I program: [1]

a. In the remedial mathematics program, the evaluator concluded that "the program was highly successful, well-administered and well taught . . . . In all grade levels, the students manifested statistically significant gains of their mathematics scores over the predicted scores." For example, only 26.32 percent of the students passed one test before receiving Title I remedial mathematics instruction. At a later time, however, 85.96 percent received passing scores on the same test. Def. Exh. Q, pp. 18, 22.

b. The evaluator of the reading skills center program concluded that "statistically significant improvement in reading achievement as measured by the Stanford Diagnostic Reading Test was evidenced by participants . . . . The individualized, diagnostic-prescriptive approach has resulted in clear and significant improvement for severely disabled readers in grades four through eight." Def. Exh. p. [sic] pp. 6-7.

c. The evaluator of the English as a second language program found that program to be "highly successful" and noted that "[t]est results for [the 3,000] participating pupils demonstrated that students at all grade levels experienced statistically significant gains." Def. Exh. R, p. 22.

d. The regular remedial reading program, which enrolled the largest number of students, received high grades from the evaluator. The evaluator stated that "[t]he major program objective, significant improvement

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[1] The most recent reports, which cover the 1979-80 school year, are marked as Defendants' Supplementary Exhibits A to E to the Supplementary Affidavit of Lawrence F. Larkin.

of reading levels over expectation, is judged to be unequivocally successful." Def. Exh. O, p. 8. The evaluator noted that students in 13 of 19 of the components of the program that he reviewed showed improvement in their reading abilities "at better than one month of reading gain for each month of instruction." *Id.* One of the major conclusions of the evaluator was as follows:

> "Implementation of the program, assessed through field visits, revealed that the program is a firstrate corrective reading effort, operating close to general program objectives and standards. There is an emphasis on individual diagnosis that is followed through with a corresponding emphasis on individual and small group instruction. The program is characterized by the presence of excellent prescriptive teaching, and imaginative and consistent efforts at motivation. A wide variety of materials are available and are in use, in conjunction with a wide range of appropriate teaching methodologies. The program has achieved a high level of student interest and involvement." *Id.* at 15-16.

e. The evaluator of the clinical and guidance program found that program to be successful in helping the students improve their skills in the instructional programs by overcoming their behavior problems. Test scores measuring behavior improvement were "highly statistically and practically significant." Def. Exh. S, pp. 15-16.

113. Parents of nonpublic school students receiving Title I services also attest to the substantial accomplishments of the Title I program. The affidavits submitted by several parents describe their children's achievements as a result of their participation in one or more of the Title I remedial educational programs and state that they could not otherwise afford to provide their children with these services. Def. Exh. U (Tabs A-55 to A-58).

III. CHARACTERISTICS OF CHURCH-RELATED SCHOOLS IN NEW YORK CITY AT WHICH TITLE I SERVICES ARE PROVIDED

114. The vast majority of nonpublic school students in New York City who receive Title I remedial services attend schools that are affiliated with one of several religious denominations. Statistics compiled by the Board reveal that approximately 85 percent of nonpublic school students receiving Title I services attend Roman Catholic schools affiliated with the Archdiocese of New York or the Diocese of Brooklyn. Approximately eight percent of participating students attend Hebrew Day schools.

115. Affidavits submitted by administrators of Catholic and Hebrew Day schools which have Title I remedial programs on their premises demonstrate that those schools do not have the characteristics of "pervasively sectarian schools" that have been involved in earlier cases in which the Supreme Court has considered the constitutionality of educational aid programs. Def. Exh. U (Tabs A-47 to A-54).

116. Those affidavits show that religiously affiliated schools attended by approximately 95 percent of nonpublic school students receiving Title I services:

a. do not restrict in any way the admission of students on religious grounds [Def. Exh. U (Tabs A-47, ¶¶ 27-31; A-48, ¶¶ 20-25; A-53, ¶ 7, A-54, ¶ 7)];

b. do not restrict the hiring of teachers on religious grounds [Def. Exh. U (Tabs A-47, ¶¶ 32-35; A-53, ¶ 10; A-54, ¶ 9)];

c. offer separate programs of secular and religious instruction and do not place religious limitations on the content of the instruction offered [Def. Exh. U (Tabs A-47, ¶¶ 36-40; A-48, ¶¶ 26-29; A-50, ¶ 7; A-53, ¶¶ 8, 9; A-54, ¶ 8)];

d. do not make any effort to compel their students to obey the doctrines and dogmas of the sponsoring church [Def. Exh. U (Tabs A-47, ¶¶ 21-23; A-48 ¶¶ 35-27 [sic])]; and

e. do not make any effort to inculcate students with or impose upon those students the religious values of the sponsoring church [Def. Exh. U (Tabs A-47, ¶¶ 24-26; A-48, ¶ 30)].

117. Those affidavits of the nonpublic school administrators also reveal that they consider the Title I remedial services offered to eligible students on their premises to be a program that is separate and distinct from the regular program of instruction sponsored by the nonpublic schools. Def. Exh. U (Tabs A-49, ¶¶ 12-19; A-50, ¶¶ 11-18; A-51, ¶¶ 12-20; A-52, ¶¶ 11-16; A-53, ¶¶ 15-21; A-54, ¶¶ 14-21).

118. Finally, the affidavits of the Hebrew Day School administrators disclose that the regular school day at those schools is much longer than normal and that a program of Title I remedial services offered at the end of that long school day would not be a practical alternative for students in those schools. Def. Exh. U (Tabs A-53, ¶¶ 8, 23; A-54, ¶¶ 8, 23).

Respectfully submitted,

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Dated: May 12, 1982

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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78 Civ. 1750

BETTY-LOUISE FELTON, CHARLOTTE GREEN, BARBARA HRUSKA, MERYL A. SCHWARTZ, ROBERT H. SIDE and ALLEN H. ZELON, PLAINTIFFS

—against—

SECRETARY, UNITED STATES DEPARTMENT OF EDUCATION and FRANK J. MACCHIAROLA, CHANCELLOR OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, DEFENDANTS

and

YOLANDA AGUILAR, LILLIAN COLON, MIRIAM MARTINEZ and BELINDA WILLIAMS, INTERVENOR-DEFENDANTS

PLAINTIFFS' COUNTER-STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

Introduction

Pla'ntiffs have reviewed defendants' prolix statement of material facts not in dispute. We believe that the most efficient and convenient way for us to present out counter-statement is to respond to the defendants' statement, paragraph by paragraph.

1-15. Not in dispute.

16. Plaintiffs object to and dispute the allegations in paragraph 16 of defendants' statement through the word "institutions' [sic] in the fourth line of the paragraph as

argumentative, conclusory and unnecessary to the allegations in the balance of the paragraph, which are not in dispute.

17. Plaintiffs object to and dispute the allegations in the opening sub-paragraph of paragraph 17 of defendants' statement through the word "setting" in the second line of the paragraph, for the reasons stated in paragraph 16 above.

18. Plaintiff's object to and dispute the allegations in the first sentence of paragraph 18 of defendants' statement unless it is construed to mean that those allegations are requirements of the applicable statute and regulations, which the parenthetical references at the end of the sentence suggest.

19. Not in dispute.

21-27. Plaintiffs object to and dispute the allegations in paragraphs 21-27 of defendants' statement as irrelevant to the constitutional issue in this case, argumentative in nature, and, in the case of paragraph 27, improperly incorporating an entire report in a statement of facts not in dispute.

28-47. Not in dispute.

48. Plaintiffs object to and dispute the allegations in the first sentence of paragraph 48 of defendants' statement, to the word "Thus" at the beginning of the second sentence of the paragraph, and to the words "As a result" at the beginning of the third sentence of the paragraph, as being argumentative, conclusory and unnecessary to the statement of facts in the second and third sentences, which are not in dispute.

49-51. Not in dispute.

52. Plaintiffs object to and dispute the allegations in the last sentence in paragraph 52 of defendants' statement as improperly incorporating several affidavits in a statement of facts not in dispute.

53-56. Not in dispute.

57. Plaintiffs object to and dispute the allegations in the last sentence of paragraph 57 of defendants' statement as argumentative and conclusory.

58. Plaintiffs object to and dispute the allegations in the last sentence of paragraph 58 of defendants' statement unless it is taken to mean that there is no *report* of the type of instance referred to in that sentence that has been officially made to the New York City Board of Education, which is the most that can be said on the subject with any claim to personal knowledge of the facts.

59. Plaintiffs object to and dispute the allegations in paragraph 59 of defendants' statement for the reasons stated in paragraph 58 above.

60. Not in dispute.

61. Plaintiffs object to and dispute the allegations in paragraph 61 of defendants' statement as being argumentative, conclusory and patently unverifiable.

62-64. Not in dispute.

65. Plaintiffs object to and dispute the allegations in the first sentence of paragraph 65 of defendants' statement for the reasons set forth in paragraph 58 above. We object to and dispute the allegations in the second sentence of the same paragraph as argumentative, conclusory and unverifiable.

66-69. Not in dispute.

70. Plaintiffs object to and dispute the allegations [sic] the last sentence of paragraph 70 of defendants' statement for the reasons set forth in paragraph 58 above.

71. Plaintiffs object to and dispute the allegations in paragraph 71 of defendants' statement as improperly incorporating affidavits in a statement of facts not in dispute.

72-79. Not in dispute.

80. Plaintiffs object to and dispute the allegations in the last sentence of paragraph 80 of defendants' statement as argumentative, conclusory and a non-sequitur.

81. Plaintiffs object to and dispute the allegations in the first sentence of paragraph 81 of defendants' statement as vague, argumentative, conclusory, and unnecessary to the allegations in the balance of the paragraph,

which are not in dispute. We dispute the allegations in the last sentence of the same paragraph unless it is taken to mean that the Board has encountered no incident that *it has understood* to require it to exercise its powers.

82-82. [sic] Not in dispute.

84. Plaintiffs object to the allegations in paragraph 84 of defendants' statement as irrelevant to the constitutional issue in this case.

85-87. Not in dispute.

88. Plaintiffs object to and dispute the allegations in the second and fourth sentences of paragraph 88 of defendants' sentences of paragraph 88 of defendants' statement as contrary to the facts reasonably inferred from the record and by the use of common sense.

89-96. Not in dispute.

97. Plaintiffs object to and dispute the allegations in the last two sentences in paragraph 97 of defendants' statement as argumentative, conclusory and improperly incorporating several affidavits in a statement of facts not in dispute.

98. Not in dispute.

99. Plaintiffs object to and dispute the allegations in paragraph 99 of defendants' statement as argumentative, conclusory and improperly incorporating in a statement of facts not in dispute an opinion of an interest party on a material issue of fact.

100-110. Plaintiffs object to and dispute the allegations in paragraphs 100 to 113 of defendants' statement as irrelevant to the constitutional issue in this case.

114. Not in dispute.

115-117. Plaintiffs object to and dispute the allegations in paragraphs 115 to 117 of defendants' statement as contrary to the facts of record and as improperly incorporating affidavits in a statement of facts not in dispute.

118. Plaintiffs object to and dispute the allegations of paragraph 118 of defendants' statement as irrelevant

to the constitutional issue in this case and as improperly incorporating affidavits in a statement of facts not in dispute.

Dated: New York, New York
May 28, 1982

Respectfully submitted,

/s/ Stanley Geller
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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78 Civ. 1750 (ERN)

BETTY-LOUISE FELTON, CHARLOTTE GREEN,
BARBARA HRUSKA, MERYL A. SCHWARTZ,
ROBERT H. SIDE and ALLEN H. ZELON, PLAINTIFFS

—against—

SECRETARY, UNITED STATES DEPARTMENT OF EDUCATION and FRANK J. MACCHIAROLA, CHANCELLOR OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, DEFENDANTS

—and—

YOLANDA AGUILAR, LILLIAN COLON,
MIRIAM MARTINEZ and BELINDA WILLIAMS, ET. AL.,
INTERVENOR-DEFENDANTS

SUPPLEMENTAL
AFFIDAVIT OF
LAWRENCE F. LARKIN

LAWRENCE F. LARKIN, being duly sworn, says:

1. I am the Director of the Office of Special Projects of the New York City Board of Education. I make this affidavit in opposition to plaintiffs' motion for summary judgment and in support of defendants' cross-motion for summary judgment and to update the affidavit sworn to by me on April 17, 1979 and submitted to the court in the case entitled *National Coalition for Public Education and Religious Liberty* v. *California, et. al.*, 489 F. Supp.

1248 (S.D.N.Y., 1980). The April 17, 1979 affidavit is being submitted to this Court along with the rest of the documentary and testimonial record in the above case pursuant to a stipulation so ordered by this Court on March 12, 1982.

2. In 1979, my title was Director of the Bureau of Nonpublic School Reimbursable Services for the New York City Board of Education. I was responsible for overall supervision and management of the compensatory education services provided to New York City nonpublic school students by the New York City Board of Education under Title I of the Elementary and Secondary Education Act of 1965 (Pub. L. No. 89-10) ("Title I"). In my new position, I continue to bear day to day administrative responsibility for the City's nonpublic school Title I program as well as supervising additional special projects for the Board of Education.

3. I have carefully reviewed my affidavit of April 17, 1979. The Title I nonpublic school program described in detail in that affidavit is the same program which I administer today.

4. In the last three years there have been no changes in any aspect of the program including the type of services available, the Board's hiring and assignment policies, the guidelines for teachers, the method of supervision, the use of Title I equipment and materials, and the administration of the program. The only changes which have occurred are in the numbers of children, teachers and schools participating in the program and in the budget. These updated statistics have been incorporated into defendants' 9 (g) statement, "Defendants' Joint Statement of Material Facts not in Dispute." They will be described below.

5. Throughout the affidavit of April 17, 1979, I stated that in my eight years as Director of the nonpublic school Title I Program, I knew of no instance where religion played any role whatsoever in any aspect of the program. Today three years later, I can again state that the Title I program is religiously neutral; I know of no instance in

which the decision to hire or reject a prospective teacher for the program was in any way influenced by the applicant's religious affiliation or beliefs; I know of no instance of any member of the Title I nonpublic school program staff becoming involved with the religious activities of the nonpublic schools, engaging in religious indoctrination in their teaching or counseling, or being pressured by nonpublic school principals or teachers to violate the explicit restrictions on the complete separation between purely secular Title I operations and the religious functions of the nonpublic school; I know of no evaluation report which has ever made a finding that Title I teachers have deviated from the explicit restrictions on their teaching activities; I have discovered no pattern of abuses of the restrictions placed on the use of Title I property; I know of no Title I room used for remedial instruction or support services at any nonpublic school which contains any religious statutes, symbols, pictures or artifacts; at no time have I been required to halt Title I services because of religious abuses or interference by nonpublic school officials with Title I teaching or supervisory activities.

6. As I stated in April 1979, to the best of my knowledge the operation of the Title I program in the nonpublic schools is similar in all material respects to the Title I program conducted on the premises of the public schools of the City of New York.

7. The pertinent statistics for the nonpublic school Title I program for the 1981-82 school year are as follows: Title I services are being provided to approximately 21,000 children attending 231 nonpublic schools, 84% of which are affiliated with the Roman Catholic Archdiocese of New York and the Diocese of Brooklyn. An additional 8% of participating students attend Hebrew Day Schools.

8. There are 532 employees in the program providing the following services: Remedial Reading, Reading Skills Services, Remedial Mathematics, English as a Second

Language, Guidance, and Clinical. In the 1981-82 school year, 78% of Title I teachers are itinerant in the sense that they spend less than five days a week at the same nonpublic school. Thus, children in 180 of the 231 nonpublic schools with Title I services receive those services from itinerant teachers. The average cost of a New York City teacher assigned to the nonpublic school Title I program for 1981-82 is $37,921.

9. The total Title I nonpublic school allocation for the 1981-82 school year is $20,003,028 which represents 13.5% of the citywide allocation of $147,850,892. Of the 302,382 public and nonpublic school children eligible for Title I services during the 1981-82 school year, 40,120 or 13.2% attended 316 nonpublic schools. (Because of logistical and budgetary problems, services cannot be provided to all eligible children.)

10. Materials purchased for the Title I program in 1981-82 cost $570,344. Of the total budget for instructional materials, 95.3% was spent on remedial teaching materials.

11. During the 1981-82 school year, the number of areas classified as "target" public school attendance areas was 561. A child must live within a target public school attendance area to satisfy the initial low-income prerequisite for Title I eligibility. In 1981-82, a target public school attendance area was one in which the percentage of needy children in the area amounted to 45.76%.

12. I am submitting with this affidavit independent evaluations of the Title I nonpublic school program for the 1979-80 school year. See Defendants' Supplementary Exhibits A-E. These evaluations show the progress made by the children in the program in improving their performance on standardized tests measuring basic educational skills.

13. In the Corrective Mathematics program the evaluator concluded, "Analysis of the pre- and posttest data for corrective mathematics students indicates that the

program had significant educational impact on pupils' mathematics achievement. The most striking gain in scores occurred in grade 1, where the average NCE gain was 24. (NCE stands for Normal Curve Equivalents, a score which expresses performance in relation to the performance of a nationally representative sample of students) . . . Observations of classrooms revealed that teachers were implementing the program according to its guidelines." Def. Supp. Exh. A, p. 33.

14. The evaluator of the Corrective Reading program stated: "In all grades, this program has had a positive impact . . . while the average performance of the group at pretest was far below the state's definition of educationally disadvantaged, (35th NCE) the group average at posttest exceeded that standard." Def. Supp. Exh. B, p. 5.

15. In the Reading Skills Center program, the children were found to have made "major gains" (Def. Supp. Exh. C, p. 4.) during their year in the program. The evaluator concluded, "On the average, students who took both the pretest and posttest gained 11 NCE's. Given that the State Education Department has set the gain of one NCE as the minimum criterion for programs to demonstrate significant educational impact, it can be concluded that pupils in this program have made substantial improvement in reading ability during the course of this year." Def. Supp. Exh. C, p. 30.

16. With regard to English as a Second Language, "all raw score means increased from pretest to posttest" during the 1979-80 school year and the evaluator stated that "The program achieved its stated objectives." Def. Supp. Exh. D, p. 2.

17. The evaluation of the Title I nonpublic school Clinical and Guidance program noted that although the "data on the academic performance of pupils does not separate the influence of the remedial instruction from the gains attributed to the Clinical and Guidance Program . . . the children receiving clinical and guidance

services do show NCE gains. This is commendable since these children, already receiving remedial services, were identified as having problems further affecting their academic performance." Def. Supp. Exh. E, pp. 4-5.

18. New York City's interest in this case transcends its desire to maintain one of the Board of Education's most successful programs. It is of primary importance to New York City that all children, whether they attend public or nonpublic school, reach adulthood with basic language and math skills. These skills are determinative of the ability to effectively participate in the economic and social life of the City. As New York City benefits from an effectively educated population it bears the cost of an educationally deprived one. In the past 15 years, New York City's on premises nonpublic school Title I program has served tens of thousands of economically and educationally deprived children. Yet, the record is bare of any instance of fostering of religious views. Based on defendants' submission to this Court, I urge that defendants' cross-motion for summary judgment be granted.

/s/ Lawrence F. Larkin
LAWRENCE F. LARKIN

Sworn to before me this
12th day of May 1982

/s/ Lorna Bade Goodman
LORNA BADE GOODMAN

Notary Public, State of New York
No. 4627573
Qualified in New York County
Commission Expires March 30, 1984

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BETTY-LOUISE FELTON, CHARLOTTE GREEN, ET AL.,
PLAINTIFFS

—against—

SECRETARY, UNITED STATES DEPARTMENT OF
EDUCATION, ET ANO., DEFENDANTS

NOTICE OF CROSS-MOTION

ALLEN G. SCHWARTZ,
Corporation Counsel,
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Due and timely service of a copy of the
within
is hereby admitted.

New York, ...19....

.....
Attorney for

To
....., Esq.,
Attorney for

DEFENDANTS' SUPPLEMENTAL EXHIBIT A

OEE
EVALUATION
REPORT

FINAL EVALUATION REPORT

ESEA Title 1

Project Identification Number: 5001-64-01624

ESEA TITLE I
NONPUBLIC SCHOOL PROGRAM
CORRECTIVE MATHEMATICS SERVICES
1979-1980

Director:	Lawrence F. Larkin
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I. *PROGRAM DESCRIPTION*

The Title I Nonpublic Schools Corrective Mathematics Services Program, hereafter called the Corrective Mathematics Program, served 8,547 nonpublic school students in grades 1 through 11 at 167 sites. Participating students were Title I eligible and required remediation in mathematics (six or more months below grade level). The goals of the program were: (1) to develop pupils' readiness for mathematics learning, (2) to improve pupils' development of mathematical concepts and (3) to increase pupils' achievement in computational and problem solving skills.

Instruction was given in small groups of five to ten students. Each group met two to five times per week for 35 to 60 minutes per session. Emphasis was placed on developmental and discovery techniques. The program provided reference materials, measurement materials, standardized tests, pupil workbooks and audio-visual materials.

The staff included one full-time equivalent (FTE)* coordinator, four FTE field supervisors, 87.4 FTE teachers and three FTE secretaries and/or clerks.

II. *DATA ANALYSIS*

Objectives And Tests Used

Grade 1. Students were to achieve gains in performance in mathematical concepts, as measured by the Stanford Early School Achievement Test, Level II, greater than would have been expected in the absence of treatment.

USOE Evaluation Model A1 was used to derive the "no-treatment expectation." Pretest raw scores were con-

---

* FTE: Full-time equivalent; one FTE is equivalent to one full-time staff position. Some teachers in the program are hired on a part-time or per diem basis; therefore, the amount of teaching service is expressed in FTE's in lieu of reporting the number of teachers employed.

verted to Normal Curve Equivalents (NCE's), a type of score which expresses performance in relation to the performance of a nationally representative sample of students. Posttest scores were also converted to NCE's. It was assumed that, in the absence of treatment, the mean NCE of the group would be the same at posttest as at pretest.

An increase in mean NCE was interpreted as a gain in performance beyond what would have been expected without treatment.

Grade 2-11. Students were to achieve gains in mathematical computation, concepts, and problem solving, greater than would have been expected in the absence of treatment. These skills were measured by the Total Mathematics Score on the Stanford Achievement Test for Grades 2-8 and by the Total Mathematics score on the Stanford Test of Academic Skills (TASK) for Grades 9-11. USOE Model A1 was used, as above, to derive the "no-treatment expectation." A gain in mean NCE from pretest to posttest was interpreted as a gain in performance attributable to the program.

CHART I
TEST LEVELS AND FORMS, BY GRADE
FOR CORRECTIVE MATHEMATICS PROGRAM

GRADES	TEST LEVELS
Grade 1	SESAT, Level II
Grade 2	SAT, PRIMARY 1, Form A
Grade 3	SAT, PRIMARY 2, Form A
Grade 4	SAT, PRIMARY 3, Form A
Grade 5	SAT, INTERMEDIATE 1, Form A
Grade 6	SAT, INTERMEDIATE 2, Form A
Grade 7-8	SAT, ADVANCED, Form A
Grades 9, 10, 11	TASK, 1 Form A *
Grade 12	TASK, 2 Form A

* Although Level II was specified in the evaluation design, Grade 11 students were actually tested with TASK, Level I. Eleventh grade norms are unavailable for Level I, so that results are not reported for this grade.

Report and Analysis of Evaluation Results

According to the records kept, 8,547 students were served by the program. This evaluation reports on 7,896 students for whom both pre- and post-test data are available. Students were eliminated from analysis because of errors in data transcription, or because appropriate norms were unavailable. For example, all 11th graders in the program were tested with TASK Level I instead of Level II. While this test may have been more appropriate to their instructional level, NCE's have not been produced for 11th graders on this test and the data were not analyzed.

As the following table indicates, the program objectives were met in all eleven grades reported. Performance improvement is particularly striking in grade 1, where there was a mean NCE gain of 24. In grades 2 through 7, where program enrollment is concentrated, mean NCE gains ranged from six to nine.

Correlated t-tests were performed on the raw scores and NCE's for grades 1 through 10 and 12. All gains were statistically significant beyond the .001 level.

III. *SUMMARY OF SURVEY DATA AND TEACHER INTERVIEWS*

Introduction

A teacher survey provided data from 80 teachers who completed the questionnaire at a group meeting at the end of the school year. The survey was constructed based on responses from the teacher interviews, pretested, and revised by the Office of Education Evaluation (OEE) with assistance from the central Title I Nonpublic School Program administrators.

Interviews conducted with teachers and staff in 12 schools from May 29, 1980 through June 1, 1980 also provided evaluation data. Each site visit included an observation of the Title I instructional program and an interview with the teacher. The sites for the evaluation

CHART II

MATHEMATICS ACHIEVEMENT SCORES FOR STUDENTS IN CORRECTIVE MATHEMATICS PROGRAM, GRADES 1-12

	RAW SCORES		NCEs		MEAN GAIN
	Pre	Post	Pre	Post	IN NCE
Grade 1 Mean	21	43	27	51	24
N=77 Median	21	43	27	46	
SESAT LEVEL II					
Grade 2 Mean	31	45	30	36	6
N=1283 Median	31	45	30	34	
SAT, PRIMARY I					
Grade 3 Mean	44	68	28	35	7
N=1456 Median	44	68	27	34	
SAT, PRIMARY II					
Grade 4 Mean	36	57	30	38	8
N=1477 Median	35	57	29	38	
SAT, PRIMARY III					
Grade 5 Mean	41	60	31	36	5
N=1364 Median	40	60	31	35	
SAT, INTERMEDIATE I					
Grade 6 Mean	43	61	28	37	9
N=944 Median	42	60	30	37	
SAT, INTERMEDIATE 2					
Grade 7 Mean	36	50	28	37	9
N=547 Median	35	47	31	38	
SAT, ADVANCED					
Grade 8 Mean	43	56	30	36	6
N=324 Median	42	53	31	36	
SAT, ADVANCED					
Grade 9 Mean	23	28	33	41	8
N=287 Median	23	29	34	41	
TASK 1					
Grade 10 Mean	24	29	32	38	6
N=160 Median	24	30	32	39	
TASK 1					
Grade 11 Mean	15	19	*	*	*
N=71 Median	15	17	*	*	
TASK 1					
Grade 12 Mean	12	14	18	28	10
N=6 Median	12	14	19	26	
TASK 2					

* All 11th graders were tested with TASK Level I instead of Level II; appropriate norms have not been produced for 11th graders on Level I (See Page 4.)

were selected randomly from a stratified sample of schools in the Title I Corrective Mathematics Program. The interview form was also constructed, pretested, and revised by the Office of Educational Evaluation with assistance from the central Title I Nonpublic School Program administrators. The interviewer was trained in the use of the form by OEE staff and Title I nonpublic school personnel before conducting the interviews. The interviewed teachers were informed that the purpose of the interview was to provide information to the program coordinators and OEE. Teachers were assured that their responses would be reported and stored anonymously. The interviews ranged in length from 40 to 60 minutes; the average interview time was 49 minutes.

Information About Teacher Respondents

Teaching Experience. The survey data indicate that 6% of the 80 teachers had one to five years experience, 45% had six to ten years, 40% had 11 to 15 years, 4% had 16 to 20 years and 5% had more than 20 years teaching experience.

Of the 12 interviewed teachers, 50% had six to ten years teaching experience, 33% had 11 to 15 years experience and 17% had 16 to 20 years experience. No interviewed teacher had less than five years experience.

Teaching Experience in the Title I Corrective Mathematics Program. Of the surveyed teachers who responded to this question, 21% of the teachers indicated that they had one year of experience in the program, 2% had two years experience, 6% had three years, 6% had four years, and 61% had five years or more experience in the Corrective Mathematics Program.

Educational Background. The survey revealed that 9% of the surveyed teachers in the program have a BA/S degree only, 14% have a BA/S degree plus graduate credits and 76% have a MA/S degree.

The interview data show 17% had a BA/S degree plus graduate credits and 83% have a MA/S degree (in ele-

mentary education, guidance administration and supervision, history, or math education). Forty percent of those with graduate degrees have taken 30 graduate credits beyond their Masters degree.

Professional Development Activities. The surveyed teachers were asked about the professional development activities in which they had participated during the past three years. Their responses indicated that 65% had earned college credits, 16% had participated in non-Title I Board of Education workshops, 21% had taken UFT courses, all had participated in Title I * * *

* * * *

[Pages 8 and 9 of original document are illegible and have been omitted in printing.]

* * * cept development; 36%, attention problems; 31% poor self-images (including fear of failure), 29%, behavioral problems; 27%, problems from other achievement areas; and 16%, language problems.

The learning problem most frequently mentioned by the interviewed teachers was reading (75%). Other problems mentioned were poor conceptual abilities (42%); behavioral problems (33%); short attention span (50%); problems in listening to and following instructions (42%); language problems (33%); anxiety (17%); and problems at home (17%). Some teachers also reported specific problems with content materials such as: difficulty with word problems, difficulty in abstract thinking, and lack of basic mathematics facts.

Teaching Methodology

Major Areas of Focus. Major areas of instructional focus indicated by surveyed teachers were: learning of basic arithmetic facts, 79%; acquisition of computational skills, 79%; increasing problem solving ability, 95%; discovering number relationships, 79%; and forming generalizations, 56%.

All interviewed teachers named the learning of basic arithmetic facts and increasing problem solving ability as the major foci of instruction. Ninety-two percent of these teachers viewed acquisition of computational skills, discovery of number relationships, forming generalizations and fixing learning as the major foci of their instruction. Other responses included: conceptual development, 25%; geometry, 8%; thinking logically, 8%; and pratical arithmetics, 8%.

Time Allocation. Interviewed teachers were asked to estimate the time allocated to various instructional activities. Seventy-five percent of the teachers indicated that they spend between 50% and 75% of their time directing instruction to the entire group of an average of ten pupils. These interviewed teachers usually spent 25% of their time on individualized instruction (including monitoring pupils' work), and 10% of their time in formal and informal diagnosis. No interviewed teacher spent more than 10% of the time in discipline and housekeeping duties.

Motivation. The surveyed teachers were asked to identify the methods or techniques they used to motivate students; 91.2% checked games, 83.8% reported using manipulatives, 56.2% checked reward systems (stars, stamps, etc.), 36.2% indicated pupil self-evaluative techniques and 25% reported graphs for self tracking. The survey also asked the teacher respondents to check the most obvious pupil behavioral changes that resulted from the increased motivation. The responses were: 64%, more participation in Title I classroom activities; 39%, willingness to try more difficult materials; 39%, better self-image; 25%, greater rapport with the teacher; 23%, more attentive; and 16%, undertaking independent work.

All of the interviewed teachers indicated the use of games and/or manipulative-type materials as motivational techniques. The interviewed teachers also noted that students have trouble sitting still; it is, therefore, important that the students be involved in activities that allow for

movement. Some movement activities were a classroom store, drawing pictures, and making pancakes as a way of dealing with fractions. Forty-two percent of the interviewed teachers tried to coordinate learning objectives with real-life problems, stores and questions. Seventeen percent used a reward system (stars/stickers) as a motivational tool. Sixty-seven percent indicated that positive changes had occurred in the students' attitudes toward mathematics. Specifically, students were eager to come to class, they requested extra work, they became more confident in their abilities, and their self-image improved. In addition, 42% of the teachers reported a decrease in discipline problems and 25% reported an increase in class participation.

Peer Tutoring, Independent Study and Individualized Instruction. Forty-six percent of the surveyed teachers indicated their students were involved in peer tutoring and 64% indicated that their students were involved in independent study activities.

During the interviews, 67% of the interviewed teachers indicated their students were involved in some form of peer tutoring. This generally took the form of one child who had mastered a topic helping another child with related work. Eighty-three percent reported that their students participated in self-evaluation activities by checking their own work and answers. All but one of the interviewed teachers indicated their students participated in independent study. Twenty-five percent reported their students did independent study in the form of homework assignments, another 25% reported that they would give an independent study assignment to individuals who were performing at a level different from the rest of the class, and 33% said they sometimes gave students work to do independently such as math games, ditto sheets and puzzles. Only one interviewed teacher indicated that children were involved in longer term independent study activities involving several days work on a topic or project.

Pupil Assessment. Surveyed teachers were asked to specify items they used to assess their students' academic abilities at the beginning of a year and during the year. The following table summarizes their responses.

TABLE 1

Techniques used by Teachers (in percentages) to Assess Pupil Achievement at the Beginning and During The Year

Type of Assessment	Beginning of Year	During Year
Title I Program Assessment	19%	9%
An Informal Reading Test	2%	2%
A Standardized Norm Referenced Test	90%	60%
A Standardized Criterion Referenced Test	7%	26%
Teacher-Made Criterion Referenced Test	10%	26%
Conference with Classroom Teacher	20%	27%
An Informal Mathematics Test	20%	0%
Classroom Observation	0%	40%

Surveyed teachers were asked to name their two major uses of the results of the initial assessment: 65% mentioned evaluation of progress; 49%, individualization of instruction; 40%, organization of group work; lesson plans; 6%, teacher self evaluation and 2% indicated using the results of the assessment for diagnostic purposes.

All interviewed teachers indicated that they gave the Stanford Achievement Test for initial diagnosis and assessment of the students' achievement in mathematics. Fifty percent of the interviewed teachers also used teacher made instruments (criterion-referenced tests). In addition, the interviewed teachers said they used the regular classroom teachers' recommendations as part of their initial and on-going assessments.

Interviewed teachers used the initial pupil assessment as a basic tool for long range planning and for organizing the students in groups. The majority of the interviewed

teachers, 83%, also reported using this preliminary testing for individualizing instruction.

Half of the interviewed teachers stated that the Stanford Achievement Test was not an adequate diagnostic instrument because it was a multiple choice test. These teachers felt the students had an advantage because they could guess correct answers to questions on skills they had not yet mastered.

Eighty-three percent of the interviewed teachers indicated that they used the Spring, 1980, administration of the Stanford Achievement Test to reassess students' achievement. In addition, all of the interviewed teachers gave some type of teacher-made test, usually at the completion of a unit. All the interviewed teachers said that their primary method of reassessment was by observation of daily work; and they keep formal records of the skills the student has mastered. All interviewed teachers meet with the regular classroom teacher for additional information for reassessing pupils.

All of the interviewed teachers felt the informal and formal reassessments were important in the evaluation of each student's progress. Sixty-seven percent of the interviewed teachers responded that on-going reassessments helped them to individualized instruction; 67% reported that it aided in organizing group work and 50% used the assessments for short and long range planning. Additional responses were to provide input to parents, feedback to pupils, information for pupil self evaluations, and data to compare with the assessments made by the regular classroom teacher.

Student Records. All interviewed teachers kept records of attendance, test scores, pupils' progress, students' work, a checklist of skill mastery for each student, a record of classroom teacher conferences and notes from their meetings with the nonpublic school principals. Other records included progress reports, records of conferences with other Title I teachers and pupil related correspondence.

Related Duties. All of the interviewed teachers identified the following areas as duties related to teaching: administering standardized tests, diagnosing pupil needs, implementing instruction, participating in in-service conferences, preparing and maintaining lesson plans and pupil records, and confering with parents. Other responses included: preparing instructional materials, organizing classrooms, conferring with teachers and the principal, preparing progress reports, listening to student problems, helping with regular classroom mathematics, and planning the schedules.

Materials. All interviewed teachers found the materials to be appropriate for the pupils they taught. Teachers indicated that commercial materials were helpful and indicated a desire for additional ones.

All of the teachers indicated that the Title I Corrective Mathematics supervisory staff selected the materials they used in their classroom. However, 75% of the teachers said that they had some input into the selection decisions because they could recommend materials.

Support Services

Clinical and Guidance. The survey asked teachers to identify those staff members who referred pupils for clinical and guidance services; 91% checked the Title I Corrective Mathematics teacher; 85%, other Title I nonpublic school teachers; 83%, classroom teachers; 75%, principals; and 27%, parents. Nineteen percent of the survey respondents judged these services to be extremely effective; 26%, very effective; 39%, somewhat effective; 1%, not at all effective; and 9% indicated they did not know.

During interviews, all of the teachers said they referred children to guidance services. Other responses included were: recommendations from the regular classroom teachers (67%), other Title I teachers (42%), the principals (17%), and parents (8%).

The interviewed teachers had varying responses about the effectiveness of the clinical and guidance services. Twenty-five percent of the interviewed teachers felt that guidance services were extremely effective; 8%, very effective; 8%, effective; 42%, somewhat effective; and 8%, not effective at all. The predominant opinion was that effectiveness of the guidance services varied in quality from school, dependent on the specific guidance counselor.

Title I Central Staff. The survey asked teachers to indicate support services provided by the Title I Corrective Mathematics supervisory staff. The surveyed teachers noted supervisory visits, instructional supplies and audio-visual equipment.

All of the interviewed teachers indicated the Title I Corrective Mathematics supervisory staff supplied instructional materials, made supervisory visits, provided reference materials, made available audio-visual equipment, and conducted workshops.

Nonpublic School Principal. Eighty-five percent of the surveyed teachers responding to the questionnaire indicated that the nonpublic school principal provided orientation to school procedures. Sixty-two percent reported the principal arranged scheduling, 18% indicated the principal held monthly conferences and 16% checked that the principal arranged conferences with the regular classroom teachers. Most of the teachers interviewed found the principals to be cooperative and available when necessary. Eighty-three percent of the interviewed teachers reported that the principal encouraged coordination with the regular classroom teacher. Sixty-seven percent indicated that the principal also provided support in the areas of orientation to the school scheduling and pupil related conferences.

Parent Contact.

Number of Frequency. The data indicated that surveyed teachers met an average of 32% of the parents.

Teachers reported seeing some parents on a continuous basis, either weekly or monthly.

Interviews revealed that those teachers met with a range of 7% to 61% * of the parents of all the students they taught (See Table 2). The mean number of parents met per teacher was 30 (the range was from seven to 59). Thirty-three percent of the interviewed teachers had met with less than 25 of the parents (range for parents: 7%-20%); 42 with between 25 and 50 of the parents (25%-44%); 25% with more than half of the parents (51%-61%). No interviewed teacher met with more than 61% of their students' parents.

The number of parents met at each classroom site (see Table 2) ranges from zero to 59. The average number of parents met at any one classroom site was 14. Forty-four percent of the classroom sites in the sample had contact with less than 25 of the parents (0%-23%) range; 40% of the classrooms in the sample had contact with 25% to 50% of the parents, and 16% had contact with more than 50 (52%-75% range). No classroom site had contact with more than 75% of the parents. The interviewed teachers indicated that most of the meetings occurred informally either before or after school. The teachers noted that they had met 10% or fewer of the parents in a formal manner. Contact with parents seemed to be dependent on the proximity of the school to the home address. Contact was high when students walked to school and low when students were bussed in from far away. The interviewed teachers said that since most parents work, they are often unable to meet with their children's teachers.

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* This figure is based on the total number of parents for all sites that each teacher serviced.

TABLE 2

Percentage of Parents Met by Each Interviewed Teacher by Each School Site

SCHOOLS	TWELVE INTERVIEWED TEACHERS											
	1	2	3	4	5	6	7	8	9	10	11	12
School I												
Pupils Taught	40	40	60	96	19	62	26	100	20	82	43	60
Parents Met	13	5	10	59	3	18	5	25	8	50	10	45
Percentage	33%	13%	17%	61%	16%	29%	19%	25%	40%	61%	23%	75%
School II												
Pupils Taught	40	40		59	40	56			21		43	36
Parents Met	8	10		2	12	20			11		4	10
Percentage	20%	25%		3%	30%	36%			52%		9%	28%
School III												
Pupils Taught	19				20				40		19	
Parents Met	3				2				20		0	
Percentage	16%				10%				50%		0%	
School IV												
Pupils Taught									20			
Parents Met									5			
Percentage									25%			
Totals												
Pupils	40	99	100	96	98	102	82	100	101	82	105	96
Parents Met	13	16	20	59	7	30	25	25	44	50	14	55
Percentage	33%	16%	20%	61%	7%	29%	30%	25%	44%	61%	13%	57%

Only 16% of the interviewed teachers reported daily meetings with any parents; when this contact did occur it was informal (on the street, before or after school). An additional 33% of the teachers saw some parents informally on a weekly basis. Eighty-three percent of the interviewed teachers indicated contact with some parents every reporting period, 58% on a monthly basis, and 100% reported seeing some parents on a yearly basis (both formally and informally). (See Table 3.)

TABLE 3

Frequency of Parent Contact by Each Interviewed Teacher

	TWELVE INTERVIEWED TEACHERS											
	1	2	3	4	5	6	7	8	9	10	11	12
Number of Parents Met	13	16	20	59	7	30	25	25	44	44	14	55
# seen daily	0	0	*	0	0	0	0	0	0	30	0	0
% seen weekly	50	0	*	50	0	3	0	0	0	30	0	50
% seen monthly	50	0	100	75	0	3	0	0	0	30	20	50
% seen every reported period	30	100	20	100	100	5	0	100	100	95	50	0
% seen yearly	100	100	100	100	100	100	100	100	100	100	100	100

* Missing data.

Method. According to the survey, the most commonly reported means of communicating with parents was face-to-face (80%). Other means reported were by telephone (22%), by written communication (20%), and by parent/tutorial workshops (35%).

Interviewed teachers were also asked about the ways they communicated with parents. All of the teachers reported face-to-face meetings. Other methods included by telephone (83%), written communications (including written progress reports), and form letters.

Initiation. Seventy-nine percent of the survey respondents indicated that the Title I corrective mathematics teacher initiated the majority of teacher-parent contacts; 15% named the parents and 1% indicated the regular classroom teacher.

Ninety-two percent of the interviewed teachers identified the Title I teacher as initiating the parent-teacher contact. Eighty-three precent [sic] of the interviewed teachers stated that some of the parents also made the initial contact. Other reported responses included the classroom teacher (50%), pupils (33%), guidance counselors (17%), and principals (8%).

Classroom and Home Involvement. Ninety-two percent of the interviewed teachers reported having individual conferences with parents to discuss the students' progress. Over half of the interviewed teachers (58%) indicated that parents came to the classroom to observe. Again, the interviewed teachers reported that inadequate transportation for parents to the school hindered parental involvement activities. It was also reported that some parents had full time job obligations or were unable to help their child (e.g., because of language difficulties).

Teachers also reported ongoing articulation and communication with parents, both through homework assignments and through parental involvement in game playing and math activities.

Major Concern of Parents. According to the survey, teachers feel the major concern of parents was whether their children were performing on grade level.

All of the interviewed teachers indicated that the primary concern of the parents was their children's progress. Other major parental concerns, as assessed by interviewed teachers, including having their children reach grade level performance (58%) and whether or not the child would be promoted (50%). Other reported parental concerns included: behavior in the classroom (17%): other services available to the child (8%); how they as parents can help their child's achievement (8%); and removing the child from the regular classroom to attend Title I classes (8%).

Recommendations

Survey Results. The survey listed seven recommendations and asked teachers to check the one they considered most important. The results were:

36%—More teacher involvement in materials selection

33%—Fewer students seen more often

18%—More workshops based on Title I teacher input (re: teaching techniques)

5%—More opportunity for coordination with the classroom teachers

2%—No significant improvement is required

1%—More opportunity for coordination with the guidance counselor

1%—More opportunity for coordination with other Title I personnel

General. General recommendations suggested by the interviewed teachers included: increase the frequency of instruction from twice a week to three to five times per

week (33%); decrease group size to permit more individualized attention (25%); more teacher involvement in materials selection (25%); more teacher exchange workshops (17%); change in the student eligibility rules so that those who are poor in math, but good readers can be included in the Corrective Mathematics Program, (8%); and increase guidance services (8%).

Staff Development. The most common recommendation was to have more workshops. Some suggestions for these workshops included a course on learning disabilities, making your own materials and model lessons. Other recommendations included more teacher-to teacher exchanges, and more teacher intervisitions.

Para-professional. Several interviewed teachers indicated that they would like to have a para-professional to help with individual pupils. All of the interviewed teachers with para-professional aides were very pleased with them.

It should be noted that para-professionals are employees of decentralized programs and as such are hired, supervised, and evaluated by community school district staff.

Para-professional staff when assigned by community school districts will, under the guidance of the Title I teacher: (1) work with the selected pupils on a one-to-one or small group basis on specifically planned activities geared to foster skills as diagnosed and taught by the Title I teacher; (2) assist with preparation of materials; and (3) assist with clerical and housekeeping tasks.

Pupil Selection. Seventy-five percent of the interviewed teachers recommended that students be placed in the program on the basis of their math disability only. Presently, the students must initially show disability in reading before becoming eligible for the Corrective Mathematics Program.

Coordination with the Regular Classroom Teacher. The Title I teacher confers periodically with the non-

public school classroom teacher to ascertain the specific needs and weaknesses of the assigned pupils. Evaluation of pupil achievement and progress reports are reviewed with nonpublic school staff. Several interviewed teachers recommended more communication with the classroom teacher. Constitutional limitation and judicial decisions determine the extent to which Title I staff are involved in the nonpublic school instructional program.

Coordination with other Nonpublic School Title I Program Staff. Several interviewed teachers indicated that communication is a problem because the days the dfferent teachers are at the same site do not always overlap.

III. [sic] *CLASSROOM OBSERVATION SUMMARY*

Introduction

At each of the 12 sites visited, classroom observations were made the same day as the teacher interview. The classroom observation usually took two and one-half hours. Fifty percent of the observations were made in the morning and 50% in the afternoon.

Classroom Characteristics

Ten of the 12 classrooms were adequate in the categories of lighting, physical c lerliness, space, ventilation, flexibility and freedom from external noise. Many of the classrooms were large and sunny and permitted an extensive display of teaching materials and student work. Of the classrooms found inadequate, one was on a poorly lit stage with poor ventilation. The space was shared with the reading teacher and thus provided little roon [sic] for math displays and/or math assignments. The other class met in the library, and that library was quite crowded. There seemed to be little blackboard space, and the math materials, although sufficient, were not readily accessible.

General Observations

A typical lesson was divided into three activities: (1) a game providing drill on a previously learned skill or the topic of the day; (2) a development lesson during which the teacher introduced a topic, many of these lessons included the use of manipulatives; and (3) a follow-up activity involving a pencil and paper task at which time the teacher provided for individual needs by circulating from child to child.

Teachers gave students immediate oral feedback through the lessons observed. Some teachers guided the children in discovering the algorithm while others tended to tell the children the process they should use. Developmental lessons in all classes included dialogue between the teacher and the students; there were no lecture classes.

Seventy-five percent of the teachers used manipulative materials during the observation period. Eighty-three percent of the teachers used games to reinforce and teach skills. All of the surveyed teachers used games and/or manipulatives. This observation is in keeping with the teacher interviews as well as the survey responses indicating that 91% of the teachers reporting using games and 84% reported using manipulatives. Twenty-five percent of the surveyed teachers used a discovery-type approach in their lessons and utilized a written or oral drill to reinforce skills. In addition, visual aids were observed in 17% of the classrooms.

Classroom Observation Checklist: Teacher

Other observations listed in Table 4, include the following: 92% of the teachers encourage children who work independently; one teacher insisted on group participation (8%). Ninety-two percent encouraged the children to work together; one teacher had prepared individual assignments for each child and did not encourage conversation among the pupils (8%). There were no social problems evident in any of the classrooms. Therefore, there was no opportunity to observe teachers solving social problems. All of the teachers worked with

the children, talked to them about their activities, helped children solve academic problems and encouraged children in their work. Twenty-five percent of the teachers were involved in pupil diagnosis/prescription during the observation period.

TABLE 4

Classroom Observation Checklist: Teacher

ACTIVITIES	# OBSERVED
Encourages children to work independently	92%
Encourages children to work together	92%
Talks with children about their activities for the instruction period	100%
Works along with children	100%
Helps children solve academic problems	100%
Helps children solve social problems	42%
Encourages/reinforces children in their work	100%
Gives feedback to children on their progress	83%
Pupil diagnosis/prescription	25%
General discussions with pupil(s)	0%
Individual pupil conference	0%

Classroom Observation Checklist: Children

Observations of the children were also made and summarized in Table 5. Children's work was visibly displayed in all classrooms. There were no classes in which groups of children worked independently or decided what activity they would engage in. Children spent time working independently in 83% of the classrooms.

TABLE 5

Classroom Observation Checklist: Children

ACTIVITIES	# CLASSROOMS OBSERVED
Work independently	83%
Work in small group independent of teacher	0%
Children decide what they will do (their plan is not limited to specific teacher conceived activities)	0%
Children's work is visibly displayed in classroom	100%

IV. [sic] *SUMMARY OF INTERVIEWS WITH PROGRAMS COORDINATOR AND FIELD SUPERVISOR*

Introduction

This section provides a summary of two separate interviews, one with the program coordinator and the other with the field supervisor. Both people have been involved with the program for 14 years. The proogram coordinator has been in that position for the entire 14 years and the field supervisor was a teacher in the program for five and one-half years and has served as the field supervisor for the past eight and one-half years.

Program Considerations

Goals. The primary goal of the program is to improve the mathematical ability of those children with diagnosed weaknesses in the areas of computation, mathematical concepts, and problem solving. The coordinator suggested that a hidden goal is to improve the children's attitude toward mathematics by creating an interest, eliminating fears and developing an appreciation of the idea that math is all around us.

In 1966, when the program began, the stated goal was to bring the children up to grade level. As the program evolved, it was discovered that the children had to be motivated and thus the hidden goal was conceived—to develop an interest and appreciation of mathematics. These goals were established by the program coordinator.

Strengths and Needs. The strengths of the program are centered in the small group size and the opportunity for individual attention; the supervisor added that the dedication and training of the staff was an asset; and the coordinator also emphasized the teachers' training in elementary mathematics. The coordinator pointed to the need for adequate time and space for staff development. The coordinator also suggested a special certification category for teachers of corrective mathematics. No

changes are presently anticipated; the program will continue as currently formulated.

Purpose of Program Assessment. The coordinator said that program assessments served for future planning and adjustment in the program as well as changes in teaching methodology. The supervisor added that the pupil assessments helped to gear the program toward the actual need of the individual child.

Instructional Considerations

Approaches to Instruction. The use of games and concrete manipulatives were emphasized. The coordinator focused on the use of technological developments such as computers and calculators. The supervisor mentioned an eclectic approach (audio-visual, manipulative, and the like) and a problem-solving approach using the various computational techniques.

Daily lesson. The supervisor outlined a standard lesson plan format consisting of a review of prerequisite skills, followed by a drill on the new or previous topics, a motivational activity presented as a question or a problem, and the lesson development. The final goal is to have the students apply their understanding of a particular concept or skill to the mastery of a new concept or skill.

Motivation. The coordinator and supervisor stressed that the use of colorful materials, a hands-on approach to learning arithmetic concepts, and the application of mathematics to everyday situations encountered by the child were the primary motivational techniques. No one textbook is prescribed, however, several textbook series are provided for teacher reference.

Overlap Between What is Taught and What is Tested. The corrective mathematics instructional objectives are more comprehensive than those measured by a standardized test. The coordinator stated that the instruction is based on weaknesses revealed by the pretest. The supervisor stated that teachers use the *New York City's*

Scope and Sequence, and *Minimal Teaching Essentials* and other New York City Board of Education publications.

Introduction of New Ideas/Approaches/Topics. The coordinator noted that during the last three years there has been an increase [sic] use of calculators as well as an increased emphasis on geometry at the elementary school level. The supervisor pointed out the new emphasis on the metric system. She also noted an emphasis toward a sensory (auditory, visual tactile) approach to instruction. The coordination of reading and math skills was also mentioned by the supervisor.

New ideas/topics/approaches are developed by the coordinator and the supervisor. The supervisor emphasized that they kept abreast of the newest methods and endeavored to adapt these to the Corrective Mathematics Program's teachers' and pupils' needs. New ideas/topics/approaches are taught to teachers during in-service workshops.

Student Considerations

Reporting of Students' Progress. The teachers discuss progress with the students daily. The supervisor reported that each student has a folder containing all of his work. The teacher also discusses the bi-yearly progress report with the student.

The parent receives two written progress reports on the child during the year. The supervisor added that parents are able to discuss their child's progress during formal and informal contacts with teachers at parent workshops.

The school principal is given a copy of each child's September and May Stanford Achievement Test scores. The supervisor also indicated that teachers maintain an on-going dialogue with the principal.

Retention of Students. Retention in the program was determined by two criteria; remaining on the eligibility list and failure to reach grade level performance.

Personnel Considerations

Supervisory Staff's Responsibilities. Informal field visits are made by the field supervisor to each teacher based on individual needs. A formal observation is made and forms the basis for a written report. Recommendations concerning teacher performance are discussed during post-observation conferences and through follow-up visits.

The supervisor mentioned that all supervisors and coordinators meet throughout the year and exchange input on the various Title I nonpublic school programs. The coordinator said that a supervisor might occasionally stop in to see teachers in other Title I programs in order to maintain inter-program communications.

Program Changes and Development. New methodologies and materials are first discussed at the supervisory level and then presented to teachers at workshops. Small groups of teachers are then asked to try the new methodology or materials for possible program-wide implementation.

Strengths and Needs of Instructional Staff. The coordinator and supervisor stressed the dedication of the teachers to the program, their qualifications, knowledge of the subject matter and their empathy for the children as the major strengths of the teaching staff.

In order to strengthen the instructional staff, the supervisor suggested the possibility of requiring an MA degree in remedial mathematics education for all future teachers. The coordinator stressed the need for a designated central program location and more time for staff training.

Recommendations

General. Both the coordinator and the supervisor stressed that pupils should be selected based on the mathematics disability alone and should allow inclusion

of children with good reading skills who are deficient in mathematics skills.

Staff Development. The coordinator suggested requiring special certification for Corrective Mathematics teachers. The coordinator also recommended making videotapes of master teachers available as a resource for the staff.

Materials. Both the supervisor and the coordinator stressed the importance of keeping abreast of new materials and adapting "useful" materials for the program.

Coordination with the Central Title I Program Staff. Both the coordinator and the supervisor felt that all Title I central staff work very closely together. No recommendations were made.

VI *EVALUATION CONCLUSIONS AND RECOMMENDATIONS*

Conclusions

Analysis of the pre- and posttest data for corrective mathematics students indicates that the program had significant educational impact on pupils' mathematics achievement. The most striking gain in scores occured [sic] in grade 1, where the average NCE gain was 24. This finding is worthy of further investigation. A major issue to address is: Are there specific instructional variables accounting for this gain? If specific instructional variables can be identified, the likelihood that they will be implemented in the following years will be increased.

Observations of classrooms revealed that teachers were implementing the program according to its guidelines. Furthermore, children were engaged in their lessons; all teachers provided encouragement and reinforcement to children at work.

Recommendations

Corrective mathematics teachers offered the following recommendations for program improvement: 1) fewer

students seen more often, 2) greater involvement in materials selections, 3) more workshops including a course on learning disabilities, making materials, and model lessons. In addition, 50% of the interviewed teachers felt that the Stanford Achievement Test was not an adequate diagnostic instrument, because the test items are multiple choice and hence, gave the student an opportunity to guess the correct answer. The evaluation team cannot fully assess the feasibility or desirability of implementing all of these recommendations. However, we do suggest that the program coordinator discuss these issues with teachers at staff meetings or during field visits.

One problem mentioned by both teachers and supervisors was the state mandated criteria for pupil selection. Pupils are selected for participation only if they are below grade level in reading as well as mathematics. Furthermore, 75% of the interviewed teachers mentioned that poor reading ability was one of the most common learning problems of their students. The evaluation team supports the program staff's concern with this issue.

An administrative practice worthy of praise is the manner in which instructional materials are selected for use. The materials are piloted on a sample of teachers to obtain their feedback before the material is considered for distribution system wide. We suggest that this practice be adopted in the other program components. In addition, the program coordinator recommended that video tapes be made of master teachers as a resource for the staff. Implementation of this suggestion would help to satisfy the teachers' desires for workshops focused on model lessons. Furthermore, it may cut down on the time needed for teacher intervisitations.

Finally the evaluation staff recommends that the effect of the tutor computer and the parent tutorial program be examined to determine the impact on pupil mathematics achievement.

DEFENDANTS' SUPPLEMENTAL EXHIBIT B

OEE
EVALUATION
REPORT

FINAL EVALUATION REPORT

ESEA Title I

Project Identification Number: 5001-64-01622

ESEA TITLE I
NONPUBLIC SCHOOL PROGRAMS
CORRECTIVE READING SERVICES

1979-1980

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I. *PROGRAM DESCRIPTION*

The Title I Nonpublic Schools Corrective Reading Services Program, hereafter called the Corrective Reading Program, served 11,789 nonpublic schools students in grades 1 through 12. The program, located at 212 sites served Title I eligible students (that is, pupils with below minimal competency in reading achievement). The goal of the program was to improve pupil's achievement in the areas of word attack, word knowledge, reading comprehension, writing and editing skills through remedial reading and writing instruction.

Instruction was given in small groups of ten pupils or less. Frequency of instructional sessions was determined by the pupils' achievement levels, severity of reading retardation, and school schedules. Pupils attended from two to five periods a week for 45 to 60 minutes per session.

The varied materials provided by the program included multi-media devices and conventional remedial reading materials (trade books, library books, work books). The staff included one full-time equivalent (FTE)* coordinator, two field supervisors, 121.2 FTE teachers and four secretaries and/or clerks.

This evaluation report is meant to report student achievement data; to describe program implementation from the teachers' and coordinator's perspectives; and to indicate directions for a more indepth evaluation during the 1980-81 year. [sic]

II. *DATA ANALYSIS*

Objectives And Tests Used

Readiness Level Grade 1. Students were to achieve gains in performance on three subtests of the Stanford

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* FTE: Full-time equivalent; one FTE is equivalent to one full-time staff position. Some teachers in the program are hired on a part-time or per diem basis; therefore, the amount of teaching service is expressed in FTE's in lieu of reporting the number of teachers employed.

Early School Achievement test greater than would have been expected in the absence of treatment. The three subtests were environment, letters and sounds, and aural comprehension.

USOE Evaluation Model A1 was used to derive the "no-treatment expectation". Pretest raw scores were converted to Normal Curve Equivalents (NCE's—a type of score which expresses performance in relation to the performance of a nationally representative group of students). Posttest scores were also converted to NCE's. It would be assumed that, in the absence of treatment, the mean NCE of the group would be the same at posttest as at pretest.

An increase in mean NCE was interpreted as a gain in performance beyond what would have been expected without treatment.

Grades 2-12. Students were to achieve gains in performance in reading comprehension greater than what would have been expected in the absence of treatment. Reading comprehension was measured by performance on the comprehension subtest of the Stanford Diagnostic Reading Test, 1976 edition, for Grades 2-8; and by performance on the comprehensive subtest of the Stanford Test of Academic Skills, for grades 9-12. USOE Model A1 was used, as above, to derive the "no-treatment expectation". A gain in mean NCE from pretest to posttest was interpreted as a gain in performance attributable to the program.

CHART I

TEST LEVELS AND FORMS, BY GRADE FOR THE CORRECTIVE READING PROGRAM

GRADES	LEVELS
Grade 2	SDRT, Red level, Form A
Grade 3, 4	SDRT, Green level, Form A
Grade 5-8	SDRT, Brown level, Form A
Grade 9, 10	TASK, Level I Form A
Grade 11, 12	TASK, Level II Form A

Report and Analysis of Evaluation Results

According to the records kept, 11,789 pupils were served by the program. Data were submitted for 11,782 students. This exaluation reports on 10,253 pupils in Grades 2-12, and 205 students in grade 1 for whom valid pre- and posttests scores were available.

CHART II

TEST SCORES FOR STUDENTS IN
THE CORRECTIVE READING PROGRAM, GRADE 1

SUBTESTS	Raw Score (mean) Pre	Post	NCE (mean) Pre	Post	Change in mean NCE
Aural Comprehension N=203	12	16	24	34	10
Letters and Sounds N=205	21	33	33	41	8
Environment N=202	17	21	23	34	11

CHART III

READING COMPREHENSION SCORES FOR STUDENTS IN CORRECTIVE READING, GRADES 2-9

Grades		Rae Scores Pre	Rae Scores Post	NCEs Pre	NCEs Post	Change in NCE
Grade 2	Mean	20	36	30	37	7
N = 1617	Median	18	37	31	38	
SDRT Red						
Grade 3	Mean	24	38	27	39	12
N = 1792	Median	24	39	28	39	
SDRT Green						
Grade 4	Mean	35	45	(31)	(38)	7
N = 1870	Median	37	47	32	37	
SDRT Green						
Grade 5	Mean	17	25	(27)	(37)	10
N = 1651	Median	16	24	30	38	
Grade 6	Mean	21	31	28	38	10
N = 1266	Median	20	31	30	38	
SDRT Brown						
Grade 7	Mean	26	37	30	38	12
N = 792	Median	26	38	32	38	
SDRT Brown						
Grade 8	Mean	31.8	42	30	41	11
N = 543	Median	33	45	31	43	
SDRT Brown						
Grade 9	Mean	22	30	16	24	8
N = 403	Median	22	30	17	25	
TASK Level I						

CHART IV

READING COMPREHENSION SCORES FOR STUDENTS IN CORRECTIVE READING, GRADES 10-12

Grades		Raw Scores Pre	Raw Scores Post	NCEs Pre	NCEs Post	Mean Gain in NCE
Grade 10	Mean	25	33	18	24	6
N = 205	Median	26	32	20	25	
TASK Level I						
Grade 11	Mean	20	28	10	23	13
N = 93	Median	19	27	7	23	
TASK Level II						
Grade 12	Mean	19.57	24	9	15	6
N = 21	Median	16	22	3	14	
TASK Level II						

In all grades, this program has had a positive impact. In grades 2-7, where the program is most extensive, the pretest mean NCE's ranged from 27 (percentile equivalent=14) to 31 (percentile equivalent=18), while the posttest NCE means range from 37 (percentile equivalent=27) to 39 (percentile equivalent=30). Thus, while the average performance of the group at pretest was far below the state's definition of educationally disadvantaged, (35th NCE), the group average at posttest exceeded that standard.

Correlated t-tests were performed on all raw scores and NCE's for each grade level. All gains were statistically significant beyond the .001 level. In general, this program serves a highly disadvantaged population, and appears to have had substantial impact on the group.

III. *SUMMARY OF SURVEY DATA AND TEACHER INTERVIEWS*

Data for the survey responses were collected from 98 reading teachers who completed the survey at a group meeting at the end of the school year. The survey was constructed, based on the responses from the teacher interviews, pretested, and revised by the Office of Educational Evaluation with the assistance from the Title I Nonpublic School Program administrators.

Data for the interview sections of this report were collected in twelve schools over a period of two and half [sic] weeks from May 22 to June 6, 1980. Each site visit included an observation of the Title I Corrective Reading class and an interview with the teacher. The sites for this evaluation were selected randomly from a stratified sample of schools in the Title I Nonpublic Schools Corrective Reading Program. The interview form also was constructed, pretested and revised by the Office of Educational Evaluation with assistance from the Title I central administrators. The interviewer was trained in the use of the interview form before the interviews began.

The teachers interviewed were informed of the purpose of the interview: to feed back information to the program coordinator for administrative and evaluative purposes. The teachers interviewed were assured complete confidentiality and anonymous reporting of their responses. Each interview took between 70 and 90 minutes. The mean interview time was 78 minutes. Some of the observations took place before the interviews and some of them were after the interview depending on the schedule of the teachers. In several instances the interview was started before the observation and completed after the classroom observation.

Information About Teacher Respondents

Teaching Experience. According to the survey results, 11% of the teachers had taught one to five years, 32% had taught six to ten years, 40% had taught 11 to 15 years, 2% had 16 to 20 years experience and 6% had more than 20 years teaching experience.

Interviewed teachers all had a minimum of five years teaching experience; 50% had six to ten years experience and 50% had taught for 11 to 15 years.

Teaching Experience in the Title I Nonpublic Schools Program. Teacher responses to the survey indicated that 15% had taught in the program for one year, 2% had taught for 2 years, 2% for three years, 7% for four years and 73% for more than 5 years.

Of the interviewed teachers, 33% had participated in the nonpublic schools program for one to five years, 58% for six to ten years, and 8% for 11 to 15 years.

Educational Background. Survey data reveal that 91% of the teachers have a MA/S degree and 9% of the teachers have a BA/S degree and graduate credits. All of the interviewed teachers have a MA/S degree in education.

Professional Development Activities. The survey asked teachers to check all the professional development activi-

ties in which they had participated during the last three years. The results were: 100%, Title I workshops; 67%, college credits; 42%, publishers' materials workshops; 40%, local and national professional conferences; 23%, other non-credit courses; 15%, UFT courses; and 13%, non-Title I Board of Education workshops.

During the past three years all of the teachers interviewed had been involved in some type of professional development: 42% of the teachers had participated in workshops, seminars, or had been actively involved in in professional organizations.

Pupil Profile

Number of Students Taught. The survey indicated that the teachers taught an average of 92 students per week. The number of pupils taught by each interviewed teacher ranged from 51 to 100; the average was 86. Thirty-three percent of the interviewed teachers met students at only one site, 50% at two sites, 8% at three sites and 8% at four sites.

Criteria for Selection. Interviewed teachers were asked to identify the criteria used for selecting pupils for the Corrective Reading Program. Ninety-two percent of the teachers indicated the criteria provided by the eligibility list were used for selection. Other responses included: severely disabled readers (83%), classroom teacher recommendations (50%) and principal recommendations (33%).

Participants in Selection. Survey respondents indicated that the following people participated in the selection process: Title I teachers (92%), the guidance counselor (44%) and other Title I teachers (29%).

All 12 interviewed teachers said the non-public school Title I guidelines were used in the selection of students. The teachers reported participants in these decisions included the Title I teacher (reported by 75% of the respondents), the classroom teacher (83%) and the school principal (75%).

Most Common Learning Problems. The survey listed eight learning problems and asked teachers to identify the three that most frequently interfered with student achievement. The responses were: 56%, limited oral vocabulary; 53%, general problems in concept formation; 46%, retention skills; 45%, attention problems; 45%, poor listening skills; 34%, poor self-image; 15%, behavioral problems; and 12%, problems in other achievement areas.

The 12 interviewed teachers mentioned an extremely wide variety of learning problems that interfered with achievement. Most frequently stated were poor inferential, conceptual, and/or critical thinking ability (75%); lack of vocabulary (50%); poor work attack skills (50%); lack of understanding main ideas (33%); and low self-esteem (25%). Additional problems mentioned related to specific reading or writing needs of the students, and poor study skills.

Teaching Methodology

Major Areas of Focus. Surveyed teachers were asked to check the major areas of focus of their instruction. The responses were: 91%, foster accurate total comprehension: 87%, development of flexible means of word analysis; 78%, development of writing techniques; 69%, development of language arts, skills and concepts; and 56%, study skills.

All 12 interviewed teachers responded that total accurate comprehension was a major focus of their instruction. All teachers interviewed also identified as major areas of focus: development and/or enrichment of language concepts: development of flexible means of work analysis; and development of writing techniques. Other areas of focus identified by relatively fewer teachers were better functioning in the classroom (33%), improvement of study skills (17%), enjoyment of reading (17%), higher self esteem (8%) and improvement of critical thinking skills (8%).

Time Allocation. The amount of time spent in different instructional groupings varied widely between teachers. All of the interviewed teachers spent at least some time on whole group instruction and some time on individual instruction. Forty-two percent of the teachers regularly spend time on small group activities. Even though the interview instrument did not specifically ask about it, three teachers mentioned that they have time for "sustained silent reading" in each class. Seventy-five percent of the interviewed teachers stated that they do on-going diagnosis throughout each class; therefore teachers had difficulty specifying a specific time allotment for diagnosis.

Motivation. Teachers responding to the survey were asked to identify the methods and techniques they used to motivate students: 75.5% used games, 68.8% used other pupil self-evaluative techniques, 53.1% used reward systems (stars, stamps, etc.), 28.5% used graphs for self-tracking and 28.6% used manipulatives. The survey asked teachers to identify the two most obvious behavioral changes that resulted from increased motivation. Their responses were: more pupil participation (54%); pupil willingness to try more difficult materials (45%); pupils know what to do without asking (30%); pupils are more attentive (20%); and pupils display greater rapport with teacher (21%).

Teacher interviews revealed that techniques and materials for motivating students varied widely, from "enthusiasm" to "treats". One teacher interviewed said her technique is "presenting it in a good way": another said, "I'm honest and direct. I tell the students if they do not work hard they are cheating themselves." A third teacher explained, "I present reading as a skill to make them brighter, as a desirable skill to have." Specific motivational techniques included asking questions (17%), reading stories aloud (17%), using the interests, experiences and writings of the children (50%), using things that happen in school (17%) or to the

teacher (8%), and integrating fun and novelty with lessons (25%). Specific motivational materials included pictures (17%), literature (17%) poetry (17%), newspapers (25%), television (8%), concrete objects (17%), colors (8%), games (17%), and teacher made tapes (8%). One teacher said her children wrote for free materials; another said she used a "problem box" to motivate students, encouraging "Dear Abby" interchanges. Twenty-five percent of the teachers said, "I'll use anything that catches their interests—everything", and one said, "I become an actress."

Teachers described changes they have noticed indicating increased motivation. These ranged from very general to very specific changes related to student behaviors, attitudes, and achievement. Changes related to student conduct included borrowing more books (33%), reading during Sustained Silent Reading time (17%), asking for more difficult work (8%), talking more about the books they are reading (8%), finishing work (8%), participating more in class (8%), and knowing routines (17%). Changes related to students' attitudes were: more enthusiastic—asking for more projects (8%); enjoying reading aloud (8%); anticipating coming to reading class (33%); liking to read what they write (8%); expressing feelings of competence (8%); acting more mature (8%); feeling self-confident (8%) and acting more attentive (17%). One teacher said the children are more eager to ask, "What are we going to do now?" more frequently. Changes related to student achievement were: writing more (8%); writing better (8%); reading simple vocabulary (8%); and general improvement in class work (17%).

Peer Tutoring, Independent Study and Individualized Instruction.

Survey responses to the question "Are your students involved in peer tutoring?" were: 38%, yes; 60%, no. Survey responses to the question, "Are your students

involved in independent study activities?" were: 79%, yes; 18%, no.

Eight of the 12 interviewed teachers stated that their students are involved in peer tutoring. One said that students read with one another; another teacher qualified her responses by adding, "I do it informally, not officially. Sometimes one child will help another."

Ninety-two percent of the interviewed teachers stated that their students are involved in self-evaluations.

Eighty-three percent of the teachers indicated that their students are involved in individual activities. Fifty percent explained that they give children individual assignments to do independently. One said, "After a whole group lesson, I usually give them individualized assignments to work on by themselves." One teacher described a contract system she had with fifth, sixth, and seventh graders in areas where she felt they needed reinforcement but not her direction.

Writing Skills, Survey Results. Ninety-one percent of the teachers reported using writing samples in connection with teaching writing. Seven teachers do not use writing samples. Those teachers reported that using writing samples was extremely effective (12%), very effective (44%), somewhat effective (35%), and not at all effective (2%). Teachers were asked if they could detect growth in any of three particular areas by reviewing their pupils' writing samples. Ninety-two percent indicated growth in sentence sense, 79% indicated growth in pupils' ability to express themselves, and 65% saw growth in the pupil's ability to write in longer units.

Writing Skills, Interview Results. Seventy-five percent of the teachers indicated improvement in a variety of areas—attitudes, criticial thinking skills, and general communication skills. Improvement was noted in the following areas: better appreciation for poetry and stories (17%), more awareness of spelling and punctuation (17%), and eagerness to read what they write (25%).

Seventeen percent of the teachers interviewed said teaching writing has helped students' critical comprehension and critical thinking skills. Twenty-five percent of the teachers said that the students are making connections between reading and writing and are seeing that writing skills (topic sentences, main ideas, details) are parallel to reading skills. One teacher indicated that teaching writing has helped her students become more verbal. Only two of the teachers stated that the teaching of writing has not affected the reading achievement of their pupils.

Time Allotment. Preferences for teaching writing varied from one hour once a week to ten minutes every other week. The great variation in teacher preference, in part, reflects their different teaching schedules. Some teach classes two days a week for an hour each, while others have classes once a week for an hour. Fifty-eight percent of the teachers indicated preference for ten to 15 minutes of writing activity daily. Twenty-five teachers preferred more time; 17% preferred less time.

The 12 interviewed teachers used writing books, activities, objects, literature, and commercial products to teach writing skills. Twenty-five percent of the teachers used *Spotlight on Writing*, 25% use *Writing Power*, 8% used worksheets, and another 8% said they get ideas from "idea books." The teachers described many activities including transforming and expanding sentences, making lists of adjectives, verbs and other parts of speech, listing synonyms and homonyms and writing beginnings and endings of stories.

One teacher focused on the practical, asserting that her students like filling out application forms and driver license forms. Another teacher taught outlining and two teachers used research to teach writing. Other ideas for ways to teach writing include: focus on creative writing by offering children ideas to write about; and involve children in sensory activities and ask children to write a description of another person for the other students to identify.

Some of the objects used to teach writing include pictures, posters, television, and newspapers. The teachers also incorporated poetry, literature, storytelling and singing. Several teachers had the children create stories and rexographed the stories for other students to read.

All the interviewed teachers said they diagnose writing skill needs based on the children's own writing.

Ninety percent of those interviewed indicated that their students had improved in sentence sense and in the ability to express themselves effectively. Forty-two percent reported that their students could write in longer units, and 33% noted that their students now write in shorter units, with fewer run-on sentences.

Public Assessment Instruments

Table 1 summarizes the surveyed teacher's responses on methods of pupil assessment.

TABLE 1

Percent of Teachers Using Various Assessments
At the Beginning of the Year and During the Year

Method	Used Beginning	Used during Year
1. Title I Program Assessment	55%	33%
2. An Informal Reading Test	60%	55%
3. A Standardized Norm Referenced Test	87%	54%
4. A Standardized Criterion-Referenced Test	21%	12%
5. Teacher Made Criterion-Referenced Test	32%	43%
6. Conference with Classroom Teacher	52%	71%
7. Informal Reading Test	3%	—
8. Classroom Observation	—	58%

Ninety-two percent of the interviewed teachers used the Stanford Diagnostic Test for assessment at the beginning of the year. Two teachers commented that they liked the test because it helps them "pinpoint problems

well." Additional measures used by teachers for initial diagnosis were Roswell-Chall (25%), Dolch Basic Word List (17%), SRA scores (17%) and Durrell or Gray Oral (8%). Informal diagnostic assessments included having the children read aloud (50%), reviewing the textbooks used by the children (8%), giving informal teacher-made tests (17%) and asking the child about the difficulties he was having (17%).

According to the survey, assessments were used in the following ways: individualizing instruction (90%), diagnosing pupil needs (64%), lesson planning (19%), organizing group work (16%) and evaluating pupil progress (8%).

The initial pupil assessment was used by all 12 interviewed teachers to individualize instruction and to plan long range lessons. There were exceptions to each case, however. One teacher said she individualized only phonics. One teacher said she did not have individual lessons because "most of the children need everything." Other purposes of the initial pupil assessment identified by teachers were: to organize group work (75%), to evaluate progress (50%) and to fulfill Title I guidelines (67%).

All interviewed teachers used formal and informal techniques to evaluate progress. Thirty-three percent of the teachers re-evaluated students once or twice a year, 17% of the teachers re-evaluated them three to four times a year and 66% re-evaluated much more frequently—8% every week, 25% every two weeks, 8% every month or 25% every six weeks. They used teacher made criterion referenced tests (25%), informal paragraphs and questions (25%), teacher made worksheets (17%), standardized tests (including Roswell-Chall, Gray Oral, Halsman Word Analysis and Durrell) (17%), and review tests and review tests from *Spotlight on Writing* (8%). Other evaluative tools used were: conferences with children (17%); writing samples (17%); close exercises (8%); workbook exercises

(8%); asking classroom teachers how children are doing (8%); daily worksheets (8%); and games.

Pupil reassessment was used by all of the interviewed teachers to modify and extend individualized instruction as well as group activities.

Student Records. All teachers kept records on tests, diagnosis, and parent conferences. In addition, they indicated that they keep records of assignments (100%), materials (92%), samples of students' writings (92%), attendance (92%), assessment checklists, on-going writing needs (83%), conferences with the guidance counselors (67%), conferences with the classroom teachers (58%), and intercomponent referrals (50%). Teachers also kept records of conferences with students, anecdotal records on each student, by-yearly progress reports, paraprofessional contacts, and teachers.

Related Duties. The interviewed teachers focused on the teaching aspects of their work and mentioned the related duties indicated in Table 2.

Materials. The survey responses indicated that 94% of the teachers felt that the materials in their classrooms were appropriate for the pupils they teach.

In interviews, 92% of the teachers reported the materials are appropriate and helpful. All 12 interviewed teachers reported that the Title I supervisory staff selected the materials for their use. Twenty-five percent of the teachers indicated that they helped in the selection of materials.

Support Services

Clinical and Guidance. The survey asked teachers to identify all those who referred pupils to the Clinical and Guidance Services; 96% of the teachers indicated the Title I teacher; 88%, classroom teachers; 82%, other Title I teachers; 82%, the principal; and 15%, parents. Survey respondents rated these services as extremely effective (14%), very effective (38%), somewhat effective (37%), not at all effective (1%) and don't know (6%).

TABLE 2

Teacher Duties and Activities
by the Percentage of Teachers Reporting Each Item

Duties And Activities	Percent of Teachers Responding
Selecting, screening and grouping of pupils employing standardized instrument measures of diagnosis and achievement.	100%
Diagnosing and prescribing to meet the needs of the pupils.	100%
Preparing and planning of long range instructional program to meet the pupils' needs and overcome weaknesses.	100%
Conducting the day-to day instructional program.	100%
Evaluating the strengths and weaknesses of the program as evidenced in pupil achievement.	100%
Conferring with parents and classroom teachers on the status of participants and on interchanges of suggested follow-up reinforcement activities.	100%
Referring participants to Clinicial and Guidance Services and the Reading Skills Center.	92%
Training students for tutor-tutorial program and training parents for the parent-turorial program.	42%
Planning and guiding the paraprofessional in conducting the activities in the reading classroom.	50%
Participating in on-the job training sessions and group training sessions.	75%

Ninety-two percent of the interviewed teachers indicated that the Title I teacher refers students to Clinical and Guidance services. Others identified by teachers as making referrals are the classroom teachers (42%), parents (8%), and the principal (8%).

Eighty-three percent of interviewed teachers described the Clinical and Guidance Services Program as very effective; 8%, as somewhat effective; and 8%, had no knowledge of the effectiveness: Several reasons were given in support of these evaluations: seeing a child when neces-

sary (50%); helping and/or visiting families (42%); making referrals for help (33%); arranging testing for students (25%); getting the child medical care (8%), and meeting with the teacher and principal (8%). One teacher said the guidance counselor has a "realistic approach to helping children in school situations". Seventeen percent indicated that the counselors follow-up problems and 25% reported that the counselors share information or offer advice to the teachers.

Nonpublic School Principal. Eighty-two percent of the survey respondents indicated the school principal provided orientation to the school; 61% reported that the principal arranged scheduling; 24% state the principal arranged monthly conferences and 14% that the principal arranged conferences with the regular classroom teachers.

When asked what kind of support they received from the nonpublic school principal, 50% of the interviewed teachers mentioned the principal's cooperation. When asked specifically about other kinds of help, teachers said they receive help with scheduling (83%), coordination (75%) and orientation (93%).

Title I Central Staff. Results of the survey item asking teachers to identify support services received from the central staff are:

96%—Supervisory visits

93%—Training/orientation

81%—Resource materials

78%—Ideas for new approaches

71%—Demonstration of administering and scoring tests

68%—Development of parent involvement activities

65%—Demonstration of test interpretation

64%—Selection of materials

64%—Aid in pupil diagnosis

62%—Aid in development of instructional methodologies

59%—Aid in selection/screening of pupils

When asked "What support services have you received from the Title I supervisory staff?", the 12 interviewed teachers were unclear about the time frame referred to because several of the listed services were provided at the beginning of the year while others are provided year long. Rsponses to questions about testing, diagnosis, pupil selection and prescription generally were qualified with "Yes, initially."

Ninety-two percent of the interviewed teachers indicated that the nonpublic school central staff provided training orientation, resource materials, and ideas for new approaches. Most of the teachers reported that the Title I central staff provided aid in pupil diagnosis (83%), development of parent involvement activities (83%), supervisory visits (83%), development of pupil prescriptions (75%), development of pupil prescription (75%), development of instructional methodologies (75%), selection of materials (75%), demonstration of administering and scoring tests (67%), and demonstration of test interpretation (67%). Forty-two of the teachers recognized the Title I supervisory staff as an aid in the selection and screening of pupils. In addition, teachers mentioned that they received monthly newsletters and a yearly evaluation.

Classroom Teacher. Surveyed teachers indicated the purposes for consultation with the regular classroom teacher as: assessing pupil needs and weaknesses, 85%; selecting pupils, 80%; coordinating scheduling, 72%; and motivating the interest of pupils, 42%.

All interviewed teachers consulted with the regular classroom teachers to assess pupil needs and weaknesses and to coordinate scheduling. Seventy-five percent of the teachers added that they use the consultations to find out

what the classroom teachers are teaching and/or coordinate lessons with the classroom teacher. Other purposes noted were discussions of pupil behavior and the sharing of test scores.

Parent Contact

Number and Frequency. The survey data indicate that the average number of parents met by the Title I Corrective Reading teacher was 36. The interviewed teachers met with 2% to 68% of the parents * of students they taught. The mean number of parents met was 33. Twenty-five percent of the teachers had met with less than 25% of the parents; 33% of teachers reported contact with more than 50% of the parents. No teacher saw more than 68% of the parents of the students taught. Parent-teacher contact varied from site to site. It should be noted that the teacher who serviced four schools had the least amount of parent contact. (See Table 3.)

Method. Surveyed teachers said their methods of communication with parents were face-to-face (65.5%), by telephone (12.6%), by written communication (36.1%) and by parent tutorial/workshops (17.6%). All of the interviewed teachers reported communicating with parents face-to-face. They also reported using other methods: telephone (75%); written communication (83%), and parent-turorials (17%). (See Table 4).

Initiation. Ninety-five percent of the surveyed teachers initiated the majority of teacher/parent contacts. Others who initiated contact included the regular classroom teacher (2%), the parents (2%) and the pupils (1%).

All of the interviewed Title I teachers initiated parent/teacher contacts. In addition, parents (67%), classroom teachers (42%), principal (98%), guidance counselor (8%) and one student (8%) have also initiated contacts.

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* This figure is based on the total number of parents for all sites each teacher serviced. See Table 3.

TABLE 3

Percentage of Parents Met by Each Teacher Interviewed
by Each School Site

Schools	Twelve Teachers Interviewed											
	1	2	3	4	5	6	7	8	9	10	11	12
School I												
Pupil Taught	57	97	96	70	94	51	40	20	44	31	60	19
Parents Met	59	50	35	35	16	28	14	8	10	17	14	2
Percentage	78%	51%	36%	50%	17%	54%	35%	40%	22%	54%	23%	11%
School II												
Pupils Taught	14					39	57	40	43	20	40	29
Parents Met	6					14	19	32	15	15	5	0
Percentage	42%					35%	33%	80%	34%	75%	13%	13%
School III												
Pupils Taught								39				19
Parents Met								27				0
Percentage								69%				0%
School IV												
Pupils Taught												17
Parents Met												0
Percentage												0%
TOTAL												
Pupils Taught	71	97	96	70	94	90	97	99	87	51	100	84
Parent Met	45	50	35	35	16	42	33	67	25	32	19	2
Percentage	63%	51%	36%	50%	17%	50%	34%	68%	29%	63%	19%	2%

TABLE 4

Type of Parent Contact by Each Teacher Interviewed

	Twelve Teachers Interviewed											
	1	2	3	4	5	6	7	8	9	10	11	12
Total No. of Pupils for Each Teacher	71	97	96	70	94	90	97	99	87	51	100	84
Face to Face	20%	48%	36%	50%	16%	53%	34%	50%	29%	62%	19%	2%
Telephone		15%	1%		2%	11%	7%		1%	58%	5%	6%
Written Communication	2%	15%	6%	14%	6%	5%	9%	8%	12%	11%		
Parent/Turorial				17%	4%							
Other												

Classroom and Home Involvement. The interviewed teachers reported that, with the exception of individual conferences to discuss student progress (reported by all the teachers), very few parents have been involved in the Title I Corrective Reading classrooms. However, 33% of the teachers reported at least one instance where a parent had come into the classroom to observe.

The interview teachers said they had suggested ways in which the parents could become involved in work with the children at home. These suggestions included using worksheets, readers and flashcards, reading with the children or taking them to the library, using television as a learning tool, helping their children read labels with shopping, and conversing with their children.

Major Concerns of Parents. Eighty-four percent of the survey respondents reported that the parents' major concern was that their children approach grade level academic performance; 7% checked promotion as a major concern and 7% checked other concerns.

Teachers reported in the interviews that parents were primarily concerned about promotion (33%), grades (33%), test scores (8%), improvement in reading (25%), and pupil behavior problems (25%). Other concerns included the child not reading at home (17%) and objections to the books the child was choosing (8%). One teacher said the parents were curious about the program, wondered what the children were working on and why they were taken out of the regular classroom.

Recommendations

Survey Results. Teachers were provided seven recommendations for improving the Title I Corrective Reading Nonpublic Schools Program and asked to check the one they thought was most important:

55%—More Title I teacher involvement in materials selection.

30%—Fewer students seen more often.

6%—More workshops based on Title I teacher input (re: teaching techniques).

2%—More opportunity for coordination with the classroom teacher.

2%—More opportunity for coordination with other Title I personnel.

1%—No significant improvement.

0%—More opportunity for coordination with guidance personnel.

General. General recommendations made by the teachers for improving the Title I Corrective Reading Program were more training/workshops (33%), more participation in the selection of materials (25%), more time with the students than once a week (25%), smaller groups of students (17%), more supervisory people (8%), more contact with parents (8%), more contact with the classroom teacher (8%) and more supplies (8%).

Staff Development. Recommendations relating to staff development included a desire for intervisitations and suggestions for topics for workshops. Teachers would like more help in the diagnosis and remediation or writing difficulties, in working with students with limited language knowledge and in teaching vocabulary and comprehension. Other suggestions for staff development included participation in outside conferences, informal rap sessions about problems, and demonstration lessons by colleagues.

Materials. Recommendations relating to materials focused on selection of materials by the teachers themselves and on the desire for new materials and new ideas for using them. Specific requests were a weekly or monthly newspaper for students, skill development materials (as opposed to skill practice materials), study skills materials for fourth grade and higher materials for teach-

ing inferential thinking, writing, vocabulary books and new literature books.

Para-professionals. Seven of the 12 interviewed teachers were assisted by para-professionals this year. Three of the seven teachers said that these para-professionals were excellently prepared and that their services were valuable. Four teachers expressed concern about the preparation of para-professionals with whom they worked. It should be noted that para-professionals are employees of decentralized programs and, as such, are hired, supervised and evaluated by community school districts' staff.

Para-professional staff when assigned by community school districts have, under the guidance of Title I teacher: worked with the selected pupils on a one-to-one or small group basis, specifically planned activities geared to foster skills as diagnosed and taught by Title I teacher; assisted with the preparation of materials; and assisted with the clerical and housekeeping tasks.

Pupil Selection. Teachers recommendations included more flexible guidelines for the selection of pupils into the program. For example: half of the teachers said a child cannot get help if he lives one block outside the prescribed area.

Coordination with the Regular Classroom Teacher. The Title I teacher confers periodically with the nonpublic school classroom teacher to ascertain the specific needs and weaknesses of the assigned pupils. Evaluation of pupils achievement and progress reports are reviewed with nonpublic school staff.

Teachers suggested that there should be even more conferences with the regular classroom teachers. It was also suggested that invitations should be extended to the Title I teachers to attend the nonpublic school faculty meetings.

It should be noted that constitutional limitations and judicial decisions determine the extent to which Title I staff are involved in the nonpublic school instructional program.

Coordination with Title I Program Staff. Recommendations concerning coordination with other Title I Program staff focused on the desire to be scheduled in a school when other Title I teachers and/or the guidance counselor are there. Some teachers suggested that meetings be scheduled for all the Title I staff in a particular school.

Sixty-seven percent of the teachers offered praise for the program. This praise was unsolicited. Some teachers commented that the newsletter was very helpful; one said, "I've taken a lot of ideas from it." Some teachers indicated that the training was thorough and others reported that the training in writing in particular was helpful. The materials were also praised and several teachers commented favorably on the organization of the program.

IV. *CLASSROOM OBSERVATION SUMMARY*

Introduction

The classroom observations were made on the same day as the teacher interview at each of the 12 sites visited. Classroom observations varied in time from 45 minutes to 95 minutes. The mean observation time was 63 minutes. Five observations (42%) took place in the morning and seven (58%) took place in the afternoon. The earliest started at 8:45 a.m. and all observations were completed by 2:25 p.m.. The lessons observed lasted from 45 to 70 minutes. The class size varied from five students to 11 students: the grade level of the classes ranged from first grade holdovers to ninth graders.

Classroom Characteristics

Most of the classrooms were large, bright and airy. All of the 12 classrooms had adequate lighting and were

orderly. Ten classrooms were free from external noise; however, in one classroom, loud noise came intermittently from an elevator which opened directly into the room and, in another classroom, an elevated train periodically passes outside the window. All but one classroom had adequate space, ventilation, and flexibility. The exception was a room that was formerly a storage closet (approximately 8′ x 16′). It had no window; students had to stand up to allow others to move into their seats. There was limited space for materials; twice during the observation, boxes of materials fell from the place where they were balanced. All of these conditions interfered with the instruction in the classroom.

General Observations

All of the teachers devoted part of the time to whole group instruction and part of the time to individual work. This is in line with the teacher reports of activities in their classrooms. (See page 6 of this report.) Over half of the observed teachers included small group work in their lessons, 58%, and 42% of the teachers were observed allowing time for sustained silent reading.

No teacher was observed teaching phonetic or word analysis skills to the whole group although several worked with individuals on phonics. Sixty-seven percent of the teachers taught comprehension skills which required recalling details and the sequence of a story, finding the main idea, drawing inferences, and predicting outcomes. One teacher asked children to answer questions about a story. Seventy-five percent taught grammar or language arts lessons including nouns and verbs, comparatives, synonyms, new vocabulary, concrete vs. abstract words, collective nouns, categorization of words, and solving riddles. Eighty-three percent of the teachers integrated some writing activity in their lessons. Observed writing activities involving composition included: writing sentences using words from given lists, rewriting the last line of a poem, rewriting a story, com-

posing a party invitation, writing four sentences beginning with a certain phrase, and writing a description of chocolate candy. All of these observations were in keeping with the teachers' stated foci of instruction: to foster accurate comprehension, to develop and/or enrich language concepts, and to develop writing techniques.

Two teachers used microfiche machines, two used tape records, two used the Language Master and three used games to reinforce skills. At least one of the motivational techniques named in the Motivation Section under TEACHER METHODOLOGY of this report (page 7) was observed in use in all of the classrooms.

Table 5 lists the observed teacher activities. All of the observed teachers talked with the children about their activities, encouraged and reinforced children in their work and gave feedback to children on their progress. The evaluator observed that 92% of the teachers helped children solve academic problems and engaged in general discussions with the pupils.

Observation Checklist: Teacher

Eighty-three percent of the teachers were observed encouraging children to work independently, 83% were involved in pupil diagnosis and/or prescription and 83% held individual pupil conferences. The evaluator also observed 67% of the teachers encouraging children to work together, 42% working along with the children, and two teachers helping children solve social problems that arose. (See Table 5.)

Observation Checklist: Children

In all the classrooms children worked independently and in all but one, the children's work was visibly displayed in the classroom. In 50% of the classrooms, children worked in small groups independent of the teacher and in 17% of the classrooms children themselves were able to decide what they would do. No overt non-social behavior was observed in any of the classrooms.

TABLE 5

Classroom Observation Checklist: Teacher

Activities	% of Teachers Observed
Encourages children to work independently	83%
Encourages children to work together	67%
Talks with children about their activities for the instruction period	100%
Works along with children	42%
Helps children solve academic problems	92%
Helps children solve social problems	17%
Encouraging/reinforcing children in the work	100%
Gives feedback to children on their progress	100%
Pupil diagnosis/prescription	83%
General discussions with pupils(s)	92%
Individual pupil conference	83%

TABLE 6

Observation checklist: Children

Activities	% of classrooms Observed
Work independently	100%
Work in small groups independent of teacher	50%
Children decide what they will do (their plan is not limited to specific teacher conceived activities).	17%
Overt non-social behavior	0%
Children's work is visibly displayed in classroom	92%

V. *SUMMARY OF INTERVIEWS WITH PROGRAM COORDINATOR AND FIELD SUPERVISOR*

Introduction

The interviews with the program coordinator and the field supervisor revealed that these administrators were in close agreement with one another in the areas of theory and practice. The backgrounds of the two people in relation to the program are very different: The coordinator has been involved with the Nonpublic School Title I Corrective Reading Program since its inception fourteen years ago; the field supervisor has been working with the program for only five months. Their responses are reported together when the two agree; when they disagree, their responses are differentiated.

Program Considerations

Goals. The goals of the program are (1) to raise reading levels as measured by a standardized instrument, (2) to help develop an awareness and love of recreational reading, (3) to assist the pupils to function better in their classrooms, and (4) to prepare pupils in content areas. The goals were developed through the identification of pupils needs within the nonpublic schools and approved by the State Education Department. There is now a greater focus on comprehension and writing skills.

Strengths and Needs. The greatest strengths of the program were identified as the diagnostic-prescriptive approach, individualization, small groups in which the teacher can isolate weaknesses and build on strengths, the close relationships a teacher has with her pupils, and the opportunity to create an environment where children have successful experiences. Individualization is possible because the teachers meet with small groups of pupils and have many varied materials.

> The materials are selected for interest as well as readability. We try to develop within the child the responsibility of becoming responsible for his/own learning. To facilitate this we give him the opportunity to do the things he can't do in his own classroom, the use of the materials that are more interesting, and more stimulating and access to audio-visual machines.

When asked what parts of the instructional program are in need of strengthening, the program coordinator replied:

> We have a dearth of supervisors. The feedback to the teachers is not as good as it should be. We need additional field supervisors to provide on-site training and support.

The program coordinator also stated:

> I would guess the teachers are uncomfortable with teaching writing. They are good at teaching decoding; they can always use new ideas to teach comprehension. I would recommend greater concentration in developing writing skills and new and different approaches to teaching comprehension skills. More time to let children read in the classroom should be built into the program.

The program coordinator indicated she would also like to see more input by teachers into the development of the curriculum and the program; she indicated that this was an area that was presently being improved and where changes are planned.

Purpose of Program Assessment. Program assessments are primarily used for diagnosing individual and group needs. They are also used for planning and for program evaluation.

Instructional Considerations

Approaches to Instruction. A wide variety of approaches to instruction are utilized, but the primary approach is diagnostic-prescriptive.

A wide variety of materials are made available to teachers, including phonetic materials, linguistic materials, audio-visual equipment and materials, language experience materials, and materials for developing comprehension through a variety of approaches. Teachers are trained to select materials appropriate for a particular child, or group.

Daily Lesson. Each lesson should include large group, small group and individualized instruction. Within that framework there should be a language development lesson, a writing lesson and uninterrupted Sustained Silent Reading. Within each of these areas, the teacher may elect to teach a comprehension skill or a writing skill.

Motivation. Motivating methods and techniques are determined by the particular teacher. The coordinator stated, "We can suggest a multitude of techniques, but the teacher selects the particular technique that is motivating for each child." The supervisor, in addition, said that the students also realized "they're here to get help, and they try to get it."

Overlap between What is Taught and What is Tested. The field supervisor stated that there is considerable overlap between what is taught and what is tested in vocabulary, comprehension, and phonetic and structural analysis. She has observed this overlap on her site visits and by looking at plan books. She added that one area the Stanford Test does not evaluate is writing skills.

The program coordinator said that teachers do not teach specifically to the test; rather, they teach reading skills based on the diagnostic-prescriptive approach. She stated, "Of course, this will hopefully create growth and the pupils will hopefully perform better on the standardized tests." This has been the case, she stated, since the evaluations do indicate that pupils demonstrate

growth in reading. "But," she added, "our goals are larger than just achieving on standardized tests."

Introduction of New Ideas/Approaches/Topics. Within the last three years, there has been more focus on the total reading process, on the schema approach and on psycholinguistics. This year writing has been introduced both as a complement to teaching reading and as a goal in itself.

These ideas/approaches/topics were introduced to the teachers in large group conferences and/or small group meetings on days when the nonpublic schools were not in session. In addition, a monthly newsletter is published, resource materials are available to teachers in the office, and field supervisors make on-site visits to help teachers to become aware of and implement new ideas.

Student Considerations

Report of Students' Progress. Progress is reported to students through informal conferences that take place at least once every two weeks. The frequency of these conferences depends on the school, the teachers and the child. The tone of the conference is not formal but rather, "You mastered ————, now let's go on to ————."

Written progress reports are issued to the parents twice a year. In addition, parents are invited to the school to talk with the teachers. In some schools, parent workshops give parents an overview of what is being taught.

Communication between the teachers and the principals is encouraged. The principals must see and sign all the reports to the parents (issued twice a year). They also receive test scores for each group. In most schools the principals also have informal conferences with the Corrective Reading teachers.

Retention of Students. Student eligibility is determined by virtue of their residence in a target area and by the degree of their reading retardation. When students achieve grade level they leave the program. If they are not on grade level, they are retained. A classroom teacher

or principal may request that a child leave the program for any reason, but this is infrequent. "On the rare occasions when a parent requests a child's removal from the program, we comply," the coordinator said. At this point there is no limit to the number of years a student can remain in the program.

Personnel Considerations

Supervisory Staff Responsibilities. On-site visits provide the basis for teacher evaluations. The supervisor visits the classrooms and observes lessons. After each observation the supervisor makes suggestions, discusses any problems, and may demonstrate the use of new materials, or demonstrate a lesson. Formal observations are followed by a conference and then by a formal observation report which is maintained in each teacher's file.

Teachers are informally observed as frequently as possible. With new, inexperienced, and/or weak teachers, the observations were more frequent than with other teachers.

Observations of unsatisfactory teaching are followed by feedback to the teacher immediately after the lesson. The supervisor stated, "where we have a weak teacher, the frequency of visits is increased, the coordinator is made aware of it, oral and written suggestions are given to the teacher and follow-up observations are made by the supervisor.

The coordinator said, "Contacts among Title I teachers in various components are difficult because they are rarely in the same place at the same time. However, we have joint programs planned by the staff. We may invite the guidance counselor to a Corrective Reading Workshop, and a math and reading booklet was jointly published at Christmas."

The coordinator stated, "The supervisory staff meets with the coordinator at least once a month and makes the coordinator aware of particular needs. They are en-

couraged to go to conferences, select new materials and transmit new ideas to the staff in the field."

Strengths and Needs of Instructional Staff. According to the coordinator:

> The instructional staff's greatest strengths are their training and their years of experience teaching reading. Ninety percent are state certified reading teachers. Seventy-five percent have a master's degree in reading. A good percentage have been teaching corrective reading for years and have been teaching in this program for 14 years. They are sophisticated in teaching reading and knowledgeable about the populations they are teaching. We have a large number of teachers who really care.
>
> The area in greatest need of strengthening is the teaching of writing skills. The program will continue to provide in-service training necessary for professional growth. No one has yet come up with the magic answer for teaching reading, but we want to keep teachers updated, so they in turn will keep children wanting to come to the reading room.

Recommendations

General. The field supervisor expresesed the need for more supervisory personnel. (The coordinator had also previously indicated that this was a need of the program.)

The coordinator indicated that she would like to see growth in the parent-tutoring and peer-tutoring programs, both of which have had favorable evaluations. In addition, she would like to see more teacher input into staff development through needs assessment, teacher presentations at staff conferences, and more opportunity to bring in top consultants in reading and writing.

Staff Development. Recommendations for staff development included (1) more opportunities for sharing of

techniques that are working in the program, (2) greater opportunities for intervisitations, and (3) enough supervisory staff to follow through with a particular teacher on training which has been initiated.

Materials. With reference to materials, the coordinator is constantly reviewing new products. She would like to field test new materials by buying small quantities for pilot basis use and evaluation before disseminating the materials to the entire staff.

Para-professional Services. Para-professional are hired by the districts. "It would help if we could hire them or if we had some clarification about their training. Are we responsible for the para-professionals and if so, in what manner? If the district is responsible, it would help to have some interchange."

Coordination with Regular Classroom Teacher. One recommendation concerning coordination with the regular classroom teachers is that there be increased articulation between the non-public schools classroom teachers and the Title I staff, particularly regarding pupil needs. Although there is informal contact, some type of structure to increase the communication between the ESL teacher and the regular classroom teacher should be studied within the constraints of the present regulations.

VI. *EVALUATION CONCLUSIONS AND RECOMMENDATIONS*

Conclusions

The Corrective Reading Program offers its teachers a wide variety of techniques and approaches to teaching reading. Teachers are free to select the techniques best suited for their students (and their teaching style) within the framework of a diagnostic prescriptive approach to teaching reading.

During the interviews, 67% of the teachers offered unsolicited praise for the program. Teachers also expressed satisfaction with the instructional materials they received

and with the organization of the program. Overall, the staff appeared enthusiastic about the program. Furthermore, the test data indicates that pupils made significant gains in reading achievement, during the course of the year. It should also be noted that the classroom observations made by the evaluation consultant were in accord with the teachers stated foci of instruction.

Recommendations

An administrative practice worthy of praise is the manner in which instructional materials are selected for use. The materials are piloted on a sample of teachers to obtain their feedback before the material is considered for distribution system wide. We suggest that this practice be adopted in the other Title I Nonpublic School Program components.

The major addition to the Corrective Reading Program this year was the state mandated writing program. Ninety-two percent of the surveyed teachers indicated that they had observed improvement in student writing ability—i.e., ability to write in longer units, growth in sentence sense, and improved self-expression. We recommend that the program continue to implement the successful practices begun this year. Through the collecting of information about the writing program from teachers and the program coordinator, the evaluation team was able to learn about the communication between the staff and program coordinator. It is noteworthy that the coordinator's perceptions of the teachers needs, related to teaching writing, matched the teachers own stated needs. One issue which should be assessed next year is the impact of the writing program on reading achievement.

Finally, the evaluation team recommends that the impact of the reading readiness program should be assessed, along with the program's staff development activities.

DEFENDANTS' SUPPLEMENTAL EXHIBIT C

OEE
EVALUATION
REPORT

FINAL EVALUATION REPORT

ESEA Title I

Project Identification Number: 5001-64-01623

ESEA TITLE I
NONPUBLIC SCHOOL PROGRAMS
READING SKILLS SERVICES
1979-1980

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I. *PROGRAM DESCRIPTION*

The Title I Nonpublic Schools Reading Skills Program, hereafter called, the Reading Skills Program, served 431 nonpublic school students in grades 4-8 at nine sites; the students are Title I eligible, have severe reading problems, and need one-to-one instruction.* The program's goal is to provide individualized diagnostic-prescriptive reading and writing skills instruction for severely disabled readers. Students demonstrate, through mastery on criterion-referenced tests, their reading proficiency in the areas of word study, vocabulary, comprehension and study skills.

Depending on the severity of the reading problem, students meet with the Reading Skills teacher three to five times per week from 45 to 60 minute sessions. This instruction continues until the student is able to function adequately in the regular nonpublic school classroom and has no further need for supplemental instruction.

The staff included one full time (FTE)** coordinator, 17 FTE teachers, and one FTE secretary. Each teacher provides a minimum of four hours of instruction per day. In addition, a one hour conference period was set up each day to be used by teachers to meet with parents, communicate with nonpublic school personnel, and to diagnose individual pupil needs.

The purpose of this evaluation report is to report student achievement data, describe program implementation from the teachers' and coordinators' perspectives, and to

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* Students are ineligible if they are non-English speaking, receive the services of the Title I Corrective Reading Program or the services of the Title I English as a Second Language Program or are enrolled in a District Reading Program.

** FTE: Full-time equivalent; one FTE is equivalent to one full-time staff position. Some teachers in the program are hired on a part-time or per diem basis, therefore, the amount of teach-in service is expressed in FTE's in lieu of reporting the number of teachers employed.

indicate directions for a more in depth evaluation during the 1980-81 year.

II. *DATA ANALYSIS*

Objectives

The objective of this program was that students were to achieve gains in performance in reading comprehension greater than would have been expected in the absence of treatment. Reading comprehension was measured by performance on the comprehension subtest of the Stanford Diagnostic Reading Test, 1976 edition.

USOE Evaluation Model A1 was used to derive the "no-treatment expectation". Pretest raw scores were converted to Normal Curve Equivalents (a type of score which expresses performance in relation to the performance of a nationally representative group of students), NCE's. Posttest scores were also converted to NCE's. It was assumed that, in the absence of treatment, the mean NCE of the group would be the same at posttest as at pretest.

An increase in mean NCE's was interpreted as a gain in performance beyond what would have been expected without treatment.

Grade 4 students were tested on the comprehension subtest of the Standford Diagnostic Reading Test, Form B, Green level. Grades 5-8 were tested on the Brown level of the same test.

Summary and Analysis of Results

Of the 431 students reported as program participants, valid pretest and posttest data were submitted for 422 students. The program results are positive (refer to Chart I). On the average, students in Grades 4 through 8 gained 11 NCE's, with a range from 9 to 12 NCE's. In all four grades, students' average performance at posttest was between NCE 34 and NCE 40. These scores are

approximately equal to a percentile ranking of 22 and 32, respectively. The pretest NCE means range from 23 to 29, or from the 10th to the 16th percentile. Thus, these students have made major gains during their year in the Reading Skills Center.

Correlated t-tests were performed on all raw scores and NCE's for each grade level. All gains were statistically significant beyond the .001 level.

CHART I.

READING COMPREHENSION SCORES FOR STUDENTS IN SKILLS CENTERS, GRADES 4-8

		Raw Scores		NCE's		Mean Gain in NCE's
		Pre	Post	Pre	Post	
Grade 4	Mean	30	43	26	37	11
N = 44	Median	31	46	27	37	
Grade 5	Mean	15	24	24	36	12
N = 89	Median	15	24	27	38	
Grade 6	Mean	17	28	23	34	11
N = 90	Median	17	28	26	36	
Grade 7	Mean	23	35	26	35	9
N = 105	Median	22	36	29	36	
Grade 8	Mean	31	40	29	40	11
N = 94	Median	33	42	30	40	

III. *SUMMARY OF SURVEY DATA AND TEACHER INTERVIEWS*

Introduction

Data for the responses were collected from 16 teachers who completed the survey at a group meeting at the end of the school year. The survey was constructed based on results from the teacher interviews pretested and revised by the Office of Educational Evaluation with assistance from the central Title I Nonpublic School Program administrators.

Data from the interviews were collected in three schools over the period from May 29, 1980 to June 10, 1980. Each site visit included observing the Title I reading skills class and interviewing the teacher. A total of four reading skills teachers were observed and interviewed; two reading teachers were interviewed at one site because there was ample time to complete both interviews. This was not the case at the other sites; at these sites, the teacher whose last name was closest to "Z" was interviewed. The sites for the evaluation were selected randomly from a stratified sample of schools in the Title I Nonpublic School Reading Skills Program.

The interview form was constructed, pretested, and revised by the Office of Educational Evaluation with assistance from the Central Title I Nonpublic School Program administrators. The interviewer was trained in the use of the form before the interviews began. Teachers being interviewed were informed of the purpose of the interview: to feed information back to the program coordinator for administrative and evaluative purposes. The teachers were assured of complete confidentiality, and their responses are all reported anonymously. Each interview took between 45 and 50 minutes. The mean interview time was 48 minutes.

Given the fact that the number of interviewed teachers was small (N=4), data percentages will not be noted and the narrative statements will tend to be brief.

Information About Teacher Respondents

Teaching Experience. The survey data indicated that 13% of the 17 teachers had total teaching experience of one to five years, 44% had six to ten years, 31% had 11 to 15 years, 6% had 16 to 20 years and 6% had more than 20 years of teaching experience.

All four of the interviewed teachers had over five years of teaching experience; two had taught six to ten years, one had taught 11 to 15 years and one had over twenty years of experience.

Teaching Experience In Title I Nonpublic School Program. Experience in the Title I Nonpublic School Program for teachers responding to the survey was 13%, one year, 0%, two years, 19%, three years, 25%, four years, 44%, more than five years. Of the interviewed teachers, two teachers had four years experience in the Title I Nonpublic School Program and two teachers had five years experience in the program.

Educational Background. All survey respondents indicated that they had an MA/S degree. All four interviewed teachers had an MA/S degree; two had 30 credits over the masters degree.

Professional Development and Activities. Over the past three years, 81% of those responding to the survey had earned college credits, 31% attended non-Title I Board of Education workshops, 19% took United Federation of Teachers' courses, 81% participated in Title I workshops, 69% attended local and national professional conferences, 63% participated in publisher's materials workshops and 25% took other non-credit courses.

During the three years, one interviewed teacher had taken coures for college credits, two are International Reading Association members and all four teachers have attended workshops and/or in-service programs.

Pupil Profile

Number of Students Taught. The average number of pupils taught by the survey respondents was approximately 27. Each of the four teachers interviewed had a total of 25 students at all sites.

Criteria for Selection. All teachers indicated that children who were severely disabled readers were eligible for the program and three teachers identified low achievers in reading as also being eligible. Also mentioned as criteria of selection for the children in reading skills classes were Science Research Associates test scores (SRA) and Metropolitan Achievement test scores (MAT). All interviewed teachers indicated that a student must meet the nonpublic school Title I guidelines.

Participants in Selection. All of the surveyed teachers reported that the Title I teacher participated in the selection of the children for the program. Other responses were nonpublic school principal, 81%; nonpublic school classroom teacher, 63%; Title I guidance counselor, 50%; and other Title I teachers, 69%.

The interviewed teachers reported that people participating in the student selection were Title I teachers (4),* the nonpublic school principal (3), classroom teachers (2), Title I corrective reading teacher (2) and the Title I guidance counselor (1).

Most Common Learning Problems. On the survey, teachers were given a list of eight learning problems and asked to identify the three most common to the students they taught. Percentages of teacher responses were as follows: 13%, problems from other achievement areas; 31%, attention problems; 50%, language problems; 6%, behavioral problems; 44%, poor listening skills; 31%, poor self-image (including fear of failure); 63%, retention skills; and 56%, general problems in concept formation.

Interviewed teachers mentioned a wide variety of learning problems. Most frequently reported were poor comprehension, short attention span, limited language development, and limited language experience (children from Spanish-speaking families). (See Table 1, page 9, for a listing of the teachers' responses.)

Teaching Methodology

Major Areas of Focus. Teachers were asked to indicate on the survey the major areas of focus of their instruction: 94%, diagnostic-prescriptive reading; 94%, diagnostic-prescriptive writing; 94%, comprehension; 81%, work attack skills; 81%, decoding; 75%, sentence structure; 69%, word power; 63%, work-study skills; and 56%, paragraph structure.

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* Numbers in parenthesis indicate the number of respondents selecting or giving a particular response.

All interviewed teachers indicated the following areas of focus for instruction: word attack skills, decoding, word power, comprehension, work and study skills, sentence structure, diagnostic-prescriptive reading and diagnostic-prescriptive writing. Also, three of the four teachers indicated that paragraph structure was an area of focus. Other areas of focus identified were: reading in content areas, punctuation, and vocabulary.

TABLE I

LEARNING PROBLEMS AS REPORTED BY TEACHER INTERVIEWEES (N = 4)

Problems	Number of Responses
Poor comprehension	2
Short attention span	2
Limited language development	2
Limited language experience (children from Spanish speaking families)	2
Low self-esteem	1
Poor background in phonics	1
Low confidence in reading ability	1
Limited experiential background	1
Poor concept vocabulary	1
Difficulty in differentiating sounds	1
Poor visual memory	1
Poor word attack skills	1
Poor socio-economic background	1
Emotional problems	1
Physical problems—need glasses	1
Poor sequential output of skills	1

Time Allocation. The amount of time spent on different instructional groupings was consistent across teachers. Three teachers said they spent 75%-85% of their time on individual instruction. All teachers responding indicated that time was spent on diagnosis, but this was an on-going process associated with the individualized in-

struction. Although all three teachers indicated that they did spend time in whole group instruction, this never exceeded 25% of the total teaching time.

Motivation. The survey asked teachers to indicate the methods or techniques they used to motivate students; they responded: 93.8%, graphs for self-tracking; 81.2%, reward systems (stars, stamps, etc.); 81.2%, other pupil self-evaluation techniques; 25%, games; 25%, other manipulatives. Teachers in the survey were asked to indicate the behavioral changes they were aware of as a result of the increased motivation. These were: know what to do without asking 63%; willing to try more difficult materials, 50%; more pupil participation in Title I classroom activities, 50%; better self-image, 38%; greater rapport with teachers 19%; and more attentive, 13%.

Three of the four interviewed teachers identified machines (A-V equipment, cassettes, etc.) as a motivating tool they used. Two of the interviewed teachers also indicated that they use high interest materials (e.g., NFL baseball reading kits) and try to focus in on the child's interests and experiences. Other specific motivational techniques mentioned by one teacher each included: motivating the child through the teacher's own interests, creating anticipation to stimulate the child's interest and encouraging the pupil to follow-up on their own, low pupil-teacher ratio, graphing student progress (self-competition) and "breaking the code" in the High Intensity Learning System (HILS) Program.

Interviewed teachers commented that as a result of increased motivation, they have noted the children are more outgoing (2), more verbally communicative (2), more willing to try difficult materials (2), reading to each other and themselves more frequently (1), learning to follow directions (1), aware of what to do without asking (1), and feeling independent because they have a "job" (1).

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* One teacher would not respond to this question indicating the program was individualized.

Peer Tutoring, Independent Study, and Individualized Instruction. Sixty-three percent of the teachers responding to the survey reported that their students were involved in peer tutoring. Sixty-nine percent reported that their students were involved in independent study activities.

During the interviews, three teachers indicated that their students were involved in peer tutoring. This took the form of older children helping younger children or a child, who had finished early, proof-reading another child's work. All of the teachers interviewed reported that their students participated in self-evaluation and three teachers stated that their students did independent study.

*Writing Skills, Survey Results.** All of the teachers responded that they use the writing of a journal in connection with teaching writing. Fifty percent indicated that the journal writing had been extremely effective for the diagnosis of writing skills as compared to using a diagnostic tool. Other responses were very effective, 38%; and somewhat effective, 13%. Teachers were given three areas of growth and asked if they could detect any growth in the students' writing from the review of the pupil journals: 100% indicated growth in ability to express oneself, 100% reported growth in the ability to write in longer units and 94% reported growth in sentence sense.

Writing Skills, Interview Results. Each of three teachers, responding to a question on improvement,** indicated pupil improvement in different areas: "vocabulary, spelling and word usage improvement and a better understanding of the main idea when they were taught paragraph structure"; "when children write their own work, they are able to read it"; and, "children realize that writ-

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* In appendix are Writing Skills Guidelines, Writing Skills Diagnostic Profile Sheets and Writing Skills Scope and Sequence of Program.

** Evaluator omitted this question from one interview.

ing is talking written down and that it is a real method of communication."

All interviewed teachers had a different preference for a weekly time schedule for teaching writing. One teacher had no preference. One teacher indicated that she would like to teach writing everyday for the first ten minutes of the class period. Another preferred to teach it one day a week as a group lesson and the fourth teacher indicated her preference was to teach writing twice a week during the 60-minute classes.

Journal writing was used by all four teachers in connection with teaching writing. Teachers indicated that the journal writing had not only been an effective diagnostic tool but had also been effective in teaching punctuation, sentence expansion and usage.

All teachers indicated that their students had grown in sentence sense, the ability to express themselves effectively and the ability to write in longer units. Two teachers reported that the students have gone from writing sentences to writing stories and compositions.

Pupil Assessment

The following table summarizes the teachers' responses on the survey to pupil assessment methods.

TABLE 2

PERCENT OF TEACHERS USING VARIOUS ASSESSMENTS AT THE BEGINNING OF THE YEAR AND DURING THE YEAR

Method	Used at Beginning	Used During Year
1. Nonpublic School Program Assessment	50%	44%
2. An Informal Reading Test	56%	63%
3. A Standardized Norm Referenced Test	75%	44%
4. Teacher Made Criterion-Referenced Test (CRT)	38%	56%
5. A Commercially Made CRT	100%	100%
6. Conference with Classroom Teacher	63%	69%
7. Classroom Observation	0%	63%

Teachers were asked to check on the survey the two major purposes for which they used the results of the initial pupil assessment: 100%, to individualize instruction; 63%, for diagnosis; 13%, to evaluate progress; 13%, for lesson plans; and 13%, to teach pupils self-evaluation.

All teachers used the Stanford Diagnostic Test for assessment at the beginning of the year. Two teachers also used SRA or MAT scores, two teachers used the Random House High Intensity Learning System and one used informal observation check-in lists for initial assessment.

The initial pupil assessment was used by all teachers to individualize instruction and to fulfill Title I program requirements. Other purposes of the initial assessment reported were: to plan long-range lessons (3), to evaluate progress (2), to organize group work (1), to diagnose (1) and to plan short-term lessons (1).

The Random House High Intensity Learning System check-in and check-out tests were administered by all teachers to reassess the students' progress during the year. The frequency of this testing ranged from every two to three days to once a month depending on the skill and on the individual child. Three of the four teachers also indicated that they reassess students through daily observations. One teacher conducts (approximately ten times a year) book conferences with children to discuss the books each child has read.

Pupil re-assessments were used by all interviewed teachers to evaluate progress and to individualize instruction (3), to help the child to become a stronger balanced reader (2), to organize group work (1), to plan long-range lessons (1), and to plan short-range lessons (1).

Students Records. For each child, all four interviewed teachers kept records of: the student's diagnostic assessment of reading and writing needs; specific instructional objectives in word study, vocabulary, comprehension and study skills; prescribed reading and writing objectives; student mastery of objectives; daily attendance; and

standardized and criterion-referenced tests. Additional records kept by teachers included lesson plans (in a plan book); a daily log noting conferences and pupil work/problems; and folders on students' progress from past years.

Related Duties. Interviewed teachers were asked to specify their duties related to teaching. All teachers reported that they selected pupils, administered tests, defined short- and long-range objectives, individualized lesson plans, evaluated pupil progress, scheduled pupils for instruction, met with parents, made clinical/guidance referrals and discussed pupil status with other Title I staff. Two teachers indicated that they directed the activities of the para-professional.

Materials Used. All of the interviewed teachers indicated that the materials they have in their classrooms are appropriate for the pupils they teach. In addition, all responded that the materials in their classrooms are helpful to them in the manner in which they teach. Selection of materials was identified by all four teachers as being provided by the Title I central staff; two teachers indicated that the Title I teacher helped to select materials.

Support Services

Clinical and Guidance. The results of the survey item asking teachers to specify all those who refer pupils to clinical and guidance services were: 100%, Title I teachers; 69%, nonpublic school principal; 88%, other Title I teachers; 94%, nonpublic school classroom teacher and 13%, parents. These Title I clinical and guidance services were rated extremely effective by 25% of the teachers surveyed, 25% rated the services very effective, and 50% rated the services as somewhat effective.

The interviewed teachers indicated that the Title I teachers refer students to the clinical and guidance services. The regular classroom teacher also can refer student (1). All of the interviewed teachers found these services to be effective.

Nonpublic School Principal. Teachers answering the survey indicated they receive support from the public school principal through orientations to school procedures, 81%; scheduling, 69%; arranging conferences with the regular nonpublic school classroom teachers, 44% and monthly conferences, 19%.

All of the interviewed teachers indicated that the principal of their school encourages coordination with regular classroom teachers, provides orientation to school procedures, and makes scheduling decisions. Three interviewed teachers noted that they received support from their principals in the following ways: the principal's attendance at the monthly conferences, the principal's respects for the program, and the principal's assistance in gaining the cooperation of parents, students, and teachers.

Title I Central Staff. On the survey, 94% of the teachers stated that the Title I central staff provided training/orientation; 88%, supervisory visits; 81%, demonstration of instructional methods; 81%, resource materials; 69%, teacher evaluation of suggested techniques; 63%, follow-up conference notes; 44%, assistance in testing/diagnosis; and 38% assistance in pupil selection.

All four interviewed teachers identified the following as support services they had received from the Title I central staff: training and orientation, demonstration of instructional methods, resource materials, follow-up conference notes, evaluation of suggested teaching techniques, and supervisory visits. Other support services provided were: assistance in testing and diagnosis (2), assistance in pupil selection (1), guidance services and psychologists (1), and accessibility for phone contact (1).

Parent Contact

Number and Frequency. The survey reveals that the teachers meet an average of 40.4% of the parents. Thirty percent of the teachers reported seeing parents on

a continuous basis, either weekly or monthly; 65.1% saw parents every reporting period; and 88.9% indicated they met with parents on a yearly basis.

Results of the interviews revealed that the number of parents met at each site ranged from six to 14. The mean number of parents met was 11.* Two teachers see some parents daily, one teacher sees some parents weekly and all teachers see some parents every reporting period.

Method. Contacts with parents reported by teachers responding to the survey were face-to-face (80.5%), by telephone (29.7%), by written communication (100%) and in parent/tutorial workshops (80.3%).

Most of the communication between parents and interviewed teachers was face-to-face. Two teachers used the phone as a means of communication and all used written communication (which include the Progress Reports which are issued twice a year).

Initiation. On the survey, 100% of the teachers indicated that they initiated the majority of teacher-parent contacts.

One of the interviewed teachers indicated that initial contact is made by the Title I teacher and the other three indicated that the parents had made their initial contact.

Classroom and Home Involvement. Parental involvement in the classroom is reported by interviewed teachers to be primarily through individual conferences to discuss their child's progress. Two teachers indicated that parents came to observe; two indicated workshops had been held for parents, and one teacher indicated that parents were involved in tutoring.

Interviewed teachers indicated that at home the parents discussed books with their children; parents have asked teachers for books to take home and read with

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* More parent contact is being provided for the students than this figure indicates; in some instances the para-professionals meet parents with the teacher present.

their children; and parents watched the television news with their children.

Major Concern of Parents. All teachers responding to the survey reported that the parents' major concern was that their children approach grade level academic performance.

Interviewed teachers report the major concerns of the parents to be: reading score improvement (2), children watch too much television (1), acceptance of the child to a good high school (1), and ways in which parents can help at home (1).

Recommendations

Survey Results. On the survey, teachers were given seven recommendations and asked to indicate which was most important for the improvement of the Title I program. The responses were:

44%—No significant improvement is required.

19%—More Title I teacher involvement in materials selection.

19%—More opportunity for coordination with the nonpublic classroom teachers.

13%—More workshops based Title I teacher input (re: teaching techniques).

6%—Fewer students seen more often.

General. Overall, morale of the Reading Skills teachers was very high. The reading teachers felt that the program was well suited for the children they taught.

Two teachers had concern about the child's removal from the regular classroom while he/she is in the Title I class; the child misses work being done in the regular classroom. One teacher felt more interaction between the Title I teacher and the regular teacher would alleviate some of the problems this presents. The other teacher recommended that the child be removed from only

one content area allowing the Title I teacher to reinforce the subject manner the child was missing.

Another teacher indicated that she would like machines—specifically additional tape recorders and a rexograph machine.

Other recommendations were:

Materials. One teacher recommended more library books because a certain percentage are lost each year.

Coordination with Regular Classroom Teacher. The Title I teacher confers periodically with the nonpublic school classroom teacher to ascertain the specific needs and weaknesses of the assigned pupils. Evaluation of pupil achievement and progress reports are reviewed with nonpublic school staff. However, one teacher indicated more communication was needed. It should be noted that Constitutional limitations and judicial decisions determine the extent to which Title I staff are involved in the nonpublic school instructional program.

IV. *CLASSROOM OBSERVATION SUMMARY*

Introduction

Three sites of the nine sites were visited. Classroom observations varied in time from 30 minutes to 60 minutes. All three observations took place in the morning; the earliest started at 9:45 A.M. and all observations were completed by 12:30 P.M.

Classroom Characteristics

All three classrooms were adequate with regards to lighting, orderliness, space, ventilation, freedom from external noise, and flexibility.

General Observations

Individualized instruction was observed in all classrooms. Also, children were assigned individual, small

group or whole group tasks. The teacher would then circulate and help students. The High Intensity Learning System Program was observed being used in all classrooms. Small group work was observed in two of the classrooms.

Observation Checklist: Teacher

All of the teachers were observed working along with the children; helping children to solve academic problems; encouraging and reinforcing children in their work; giving feedback to children on their progress; and providing individual pupil conferences. Teachers were also observed talking with children about their activities for the instruction period, having general discussions with the pupils, encouraging the children to work independently, and encouraging the children to work together.

TABLE 3

CLASSROOM OBSERVATION CHECKLIST: TEACHER
(Number of Classrooms = 3)

Activities	Number of Teachers Observed
Encourages children to work independently	1
Encourages children to work together	1
Talks with children about their activities for the instruction period	2
Works along with children	3
Encourages/reinforces children in their work	3
Gives feedback to children on their progress	3
Pupil diagnosis/prescription	0
General discussions with pupil(s)	2
Individual pupil conference	3

Observation Checklist: Children

In all classrooms children were observed working independently. Children's work was visibly displayed in all classrooms. There was no overt anti-social behavior observed.

TABLE 4

CLASSROOM OBSERVATION CHECKLIST: CHILDREN
(Number of Classrooms = 3)

Activities	Number of Classrooms Observed
Work independently	3
Work in small groups independent of teacher	0
Overt anti-social behavior	0
Children's work is visibly displayed in classroom	3

V. *SUMMARY OF INTERVIEW WITH PROGRAM COORDINATOR*

Introduction

The Program Coordinator has been involved with Title I programs in reading since 1968—three and a half years as a corrective reading teacher, seven years as corrective reading supervisor and one year as the Reading Skills Program Coordinator. The interview with the program coordinator lasted one hour, 50 minutes.

Program Considerations

Goals. The Program Coordinator specified several educational goals and philosophic orientations: (1) to identify and remediate student techniques include teacher-made and commercial materials; (2) to establish rapport between the teachers and pupils; she stressed that this rapport is essential before learning can take place; (3) to establish a non-threatening environment for the students and create an atmosphere of trust; (4) to create a democratic classroom where children are a part of the teaching-learning process; and, (5) to engage children in the learning process so that the children will understand their own needs, know why they are there, what they are doing, and be part of the evaluation process.

These goals were developed by assessing the needs of the target population through diagnostic and standardized test results, results from previous evaluations, current research in learning methodologies, exploration of newer materials on the commercial market and input from reading skills teachers via their pupil evaluations.

The goals have changed since the beginning of the program largely as a result of changes in State mandates. This year the State-mandated writing program was instituted. New teaching methodologies were employed, along with the purchase of new materials to foster the development of the writing program. Other changes in the program included increased teacher participation in materials selection* and more encouragement of parental cooperation.

Strengths and Needs. The program coordinator indicated several strengths of the program. The first one she mentioned was the individual diagnostic-prescriptive approach coupled with the small teacher-pupil ratio. This approach is possible because of the variety of materials in all skill areas, and the effective classroom management system (criterion-referenced testing, mastery learning and others). The instructional staff was aided by inter-visitations, conferences, demonstration lessons, observations, and staff training bulletins. In addition, the small supervisor-staff ratio encourages flexibility. It was also noted that the supervisor has a car which makes it easier to meet with the program's teachers. The coordinator also indicated that there was cooperation and support from the Title I Director and Assistant Director and open channels of communication with other Board of Education agencies.

To strengthen the program, the Coordinator suggested continued work in developing oral language facility and furthering concept development. In addition, she sug-

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* See Appendix for a copy of the evaluation form used by teachers to assess materials they used in classroom.

gested continued teacher training in the areas of writing skills and awareness of pupil's needs. Changes anticipated or planned include introducing professional literature, follow-up work on sentence combining and sentence expansion and a continued focus on the writing skills program in the form of continued research, use of the teacher-made materials, and purchase of more commercially-made materials.

Purpose of Program Assessment. Program assessments were used to determine the degree to which the specific reading and writing skill objectives were attained by the individual pupils, to further identify the needs of the target population, to develop the curriculum and incorporate necessary changes, to assess materials (and thus influence what materials to purchase), and to evaluate teacher training.

Instructional Considerations

Approaches to Instruction. Within the individualized diagnostic-prescriptive approach, a wide variety of methods to teach reading and writing were utilized. The students are grouped together for instructional purposes—to be paired with tutors or to form small groups based on pupil interests. Teachers used a variety of materials to explain and refine a skill—bulletin boards, demonstrations, reference materials and the like. Other methods used were language experience, direct instruction, phonics, and emphasis on the task analysis of the skills.

Daily Lesson. General components of the daily lesson should include journal writing, sustained reading, one-to-one diagnosis of pupils needs, direct skill instruction, mastery testing, and some type of reinforcement activity to remediate specific weaknesses using commercially prepared materials.

Motivation. The Program Coordinator indicated that motivation must be directly related to the objective and aims to tap the needs, interests, and abilities of the student. Specific techniques included questioning strategies,

using the child's experiential background; the use of pictures, diagrams and physical representations; discussions, demonstrations and explanations; audio-visual materials (machines, cassettes and other); and reading stories aloud.

Overlap Between What is Taught and What is Tested. The program coordinator stated that there is an overlap between what is taught and what is tested. The program has specific objectives outlined in the materials and the mastery tests are directly related to the attainment of these objectives. Further, the analysis of the journal writing is directly related to the instructional program. This overlap is indicated by the high correlation between the needs of the students (indicated by the standardized tests) and the skills the coordinator observed being taught in the classrooms.

Introduction of New Ideas/Approaches/Topics. Because this was the program coordinator's first year, she was only able to speak of the changes implemented this year. The writing program was initiated this year using the individualized prescriptive approach focusing on the skills and techniques of sentence combining, sentence expansion and diagnostic profiles on writing skills. Teachers were encouraged to implement an oral and listening vocabulary development program using the pupil's experiential background and to develop oral communication skills (as a prerequisite to writing skills).

These ideas/approaches/topics were introduced to the teachers in staff training sessions using the following techniques: demonstration lessons; workshops; staff bulletins (as follow-ups to the demonstration lessons and workshops); presentation of current research to the teachers at conferences; and disseminating information about local reading councils, fairs, and exhibits. In addition, teachers were observed (informally and formally) to see if various ideas/approaches/topics had been used in the classroom. If the coordinator observed the teacher using skills, materials or ideas in the classroom that had

been previously demonstrated, a note of praise was sent to the teacher after the field visit stating the specific skill that had been implemented.

Student Considerations

Reporting a Student's Progress. The student gets feedback on his progress in a number of ways. The High Intensity Learning System program includes check-in/check-out tests which are used regularly (daily to weekly depending on the need). Wall charts are used daily. Pupil-teacher conferences also provide the student with an evaluation of his/her progress. Students also see their progress reports which are issued twice a year.

Written progress reports are issued to the parents twice a year. The teachers are also available for individual and group conferences. The frequency of these conferences varies with the need of the child and the availability of the parents.

The principals are given special reporting forms which indicate the results of the posttesting. There is also ongoing communication between the teachers and the school principals as needed. Nonpublic school classroom teachers are also provided with Pupil Profile Reports indicating strengths and weaknesses in skill areas.

Retention of Students. The guidelines for selecting a student are built into the program. A child can stay until he/she reaches grade level at which time they leave the program. There is no limit to the number of years a student can remain in the program.

Personnel Considerations

Coordinator's Responsibilities. Formal observations are employed to evaluate teachers. The teachers are assessed by observing to what degree they have implemented the guidelines and approaches/ideas/topics introduced to them in workshops, conferences, staff bulletins and the like. Teachers are formally evaluated once a

year. There are also unannounced site visits. If a teacher's performance is observed to be unsatisfactory, the program coordinator would plan teacher training sessions, discuss the situation with the Program Director and follow the established Board of Education procedures, if necessary.

The program coordinator reported that she meets the responsibility of relating to other Title I coordinators through on-going communication with the coordinators of other Title I services. There is informal communication regarding materials, methodologies, staff training programs, specific pupil needs, scheduling and the like. Title I Clinical and Guidance Program sends to the coordinators pertinent data monthly.

Program change and the development of staff are the result of: attending conventions, conferences, and training sessions; following current research; reviewing new materials; developing staff training programs; and communicating with other Board of Education divisions.

Strengths and Needs of Instructional Staff. The Program Coordinator indicated that the greatest strengths of the instructional staff were their diagnostic techniques, evaluation techniques (check-in and check-out mastery testing), methods of reporting data (pupil record keeping), and communicating with the other supportive Title I services staff and the classroom teacher in the nonpublic school.

Recommendations

The Program Coordinator's recommendations were related to staff development activities:

—The instructional staff should be strengthened in the use of tools for evaluation in the writing skills component.

—Teachers should assist pupils in developing language facility, especially oral and listening vocabulary.

—Teachers should be given additional instruction in the primary scoring, interpretation, and use of the California Achievement Test data. (The program will be using the CAT for the first time next year in place of the Stanford Diagnostic Reading Test.)

VI. *EVALUATION CONCLUSIONS AND RECOMMENDATIONS*

Conclusions

Students in the Reading Skills Center showed significant improvement in reading achievement as measured by the Stanford Diagnostic Reading Test. On the average, students who took both the pretest and posttest gained 11 NCE's. Given that the State Education Department has set the gain of 1 NCE as the minimum criterion for programs to demonstrate significant educational impact, it can be concluded that pupils in this program have made substantial improvement in reading ability during the course of this year.

Observations and interviews revealed the following information related to program implementation. In all classrooms, children were observed working independently and student work was visibily displayed. Teachers expressed satisfaction with the instructional materials they had received and the staff training provided by the program coordinator. Overall, morale was high; both teachers and the program coordinator were pleased to be working in the program. These statements are supported by the fact that 44% of the surveyed teachers felt that the program needed no significant improvement.

Furthermore, communication between the teachers and the program coordinator was excellent. The coordinator's perceptions of the instructional needs of students were in accordance with teacher preceptions. Specifically, 50% of the teachers identified language problems as one of the three most common learning problems of students

they taught; 44% identified poor listening skills as a major learning problem. The coordinator showed awareness of student problems in these areas in her recommendation that teacher training sessions be devoted to developing oral language facility.

Recommendations

Since the writing component and the development of oral vocabulary and listening skills were new features to the program this year, the evaluation team supports the coordinator's recommendations that: (1) staff development in these areas be continued, and (2) the implementation of these components be monitored.

Since the journal writing technique was identified by teachers as an effective tool in the teaching of writing, especially punctuation, sentence use, and sentence expansion, it is recommended that this technique be continued. Methods should be developed to evaluate the pupils' journal writing; and the impact of the writing program on reading achievement should be assessed.

DEFENDANTS' SUPPLEMENTAL EXHIBIT D

OEE
EVALUATION
REPORT

FINAL EVALUATION REPORT

ESEA Title I

Project Identification Number: 5001-64-01625

ESEA TITLE I

NONPUBLIC SCHOOL PROGRAMS
ENGLISH AS A SECOND LANGUAGE

1979-1980

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I. *PROGRAM DESCRIPTION*

The Title I Nonpublic Schools English as a Second Language Program, also referred to as the ESL Program, served 3,360 nonpublic school students in grades K-8 at 86 sites. All the students, were Title I eligible and exhibited deficiencies in the use of English language skills in the areas of listening, speaking, reading, and writing. Student language development was measured by an analysis of their scores on standardized pre- and post-tests. The major component of the program was small group instruction (maximum of ten pupils) with a licensed ESL teacher. These groups met two to five times per week for a maximum of 60 minutes per session, depending on the severity of the language deficit.

The project funded salaries for teachers, supervisors, and administrative staff. The staff included one coordinator, one field supervisor, 51.4 full-time equivalent (FTE)* teachers, and two FTE secretaries. The funds for teaching materials (language games, textbooks, workbooks, pictures, and posters) and audio-visual resources (tape-recorders, film-strips, language master machines, records, and tapes) were also provided by the program.

II. *DATA ANALYSIS*

Objectives And Tests Used

Students were to improve in auditory skills as measured by their performance on the language subtest of the 1978 Test of Basic Experience (TOBE), level K for kindergarten and level L for grade 1; and their performance on the Total Auditory subtest of the 1973 Stanford Achievement Test (SAT), Primary I, Form A, for grades 2-8.

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* FTE: Full-time equivalent; one FTE is equivalent to one full-time staff position. Some teachers in the program are hired on a part-time or per diem basis; therefore, the amount of teaching service is expressed in FTE's in lieu of reporting the number of teachers employed.

Report And Analysis Of Evaluation Results

Standardized tests: The program served 3,360 pupils according to records. Data were submitted for approximately 3,333 pupils. Valid pre- and posttest data on the TOBE or the SAT Auditory were obtained for 3,077 students. In addition 48 students were pre- and posttested on the SAT Reading Test Primary I, Form A Total Reading.

All raw score means increased from pretest to posttest. Correlated t-tests were performed on the raw scores for each instruments, all gains were statistically significant at the .01 level or better. (See Chart I.)

The program achieved its stated objectives.

CHART I
STANDARDIZED TEST SCORES FOR STUDENTS
IN THE ESL PROGRAM, GRADES K-8

Grade Levels	Raw Score Means		
	Pre-test	Post-test	Gains
Kindergarten N=412 TOBE Level L	7	15	8
Grade 1 N=940 TOBE Level L	10	17	7
Grade 2 N=716 SAT Auditory	26	37	11
Grade 3 N=366 SAT Auditory	34	44	10
Grade 4 N=206 SAT Auditory	32	42	10
Grade 5 N=145 SAT Auditory	33	44	11
Grade 6 N=107 SAT Auditory	33	45	12
Grade 7 N= 97 SAT Auditory	32	45	13
Grade 8 N= 88 SAT Auditory	26	44	18
All Grades N=3077			

III. *SUMMARY OF SURVEY DATA AND TEACHER INTERVIEWS*

Introduction

Data were collected from 42 teachers who completed a questionnaire at a group meeting at the end of the school year. The questionnaire forms were constructed, pretested, and revised by the Office of Educational Evaluation with the assistance of Title I central nonpublic school administrators.

Data for the interview summaries were collected in eight schools. Each site visit included an observation of the Title I class and an interview with the teacher. The sites for this evaluation were selected randomly from a stratified sample of schools in the Title I English as a Second Language Program. The interview form was also constructed, pretested, and revised by the Office of Educational Evaluation with the assistance of the Title I central nonpublic school administrators. The interviewer was trained in the use of the form before the interviews began. The interviewed teachers were informed of the purpose of the interview: to feed back information to the program coordinators for administrative and evaluative purposes. The teachers were assured their responses would be reported anonymously.

Information About Teacher Respondents

Teaching Experience. Teachers were asked to indicate how many years of teaching experience they had. Responses to the teacher survey indicated that 26% of the teachers had one to five years total teaching experience; 43% had six to ten years experience; 21% had 11 to 15 years experience; 2% had 16 to 20 years experience and 7% had more than 20 years teaching experience.

All interviewed teachers had a minimum of five years teaching experience. Sixty-three percent of the teachers

had six to ten years experience, 13% had 11 to 15 years experience, 13% had 16 to 20 years experience, and 13% had more than 20 years experience.

Teaching Experience in the Title I ESL Program. Twelve percent of the survey respondents had been in the program one year, 15% had two years experience, 14% had three years experience, 14% had four years experience, and 52% had more than five years experience in the program.

Thirteen percent of the interviewed teachers had taught in the program for five years, 63% had been in the program for six to ten years, and 25% had 11 to 15 years.

Educational Background. The survey revealed that 12% of the teachers had only a BA/S degree, 10% had a BA/S degree and graduate credits, and 79% had a MA/S degree.

All of the interviewed teachers had a BA/S degree. Seventy-five percent had an MA/S degree, but the 25% teachers who did not have an MA/S degree did have at least 30 graduate credits in ESL. In addition, 50% of the teachers with an MA/S degree had also taken 12 or more graduate credits beyond the MA/S degree.

Professional Development and Activities. During the past three years, 86% of the survey respondents earned college credits, 12% attended Non-Title I Board of Education workshops, 26% attended UFT courses, 74% participated in Title I workshops, 43% attended local and national professional courses, 48% participated in publisher's materials workshops, and 45% took other non-credit courses.

During the past three years, all interviewed teachers were involved in some type of professional development: 75% of the teachers interviewed had taken courses for college credit; 50% indicated they were involved in some type of self-initiated professional activity; and 63% reported they had attended conferences or professional meetings, particularly the Teachers of English to Speak-

ers of Other Language (TESOL) and the regional New York State English to Speakers of Other Language Bilingual Education Association meetings. One teacher taught ESL to Chinese adults and Vietnamese "boat people" and another teacher had traveled to a Spanish-speaking country. All teachers had attended staff training program meetings.

Pupil Profile

Number of Students Taught. The survey data indicated that each teacher was assigned approximately 59 students.

Information gathered from the service interviews showed the number of students taught by any one teacher ranged from 52 to 65*. Seventy-five percent of the teachers taught at two sites and 25% of the teachers taught at only one site.

Criteria for Selection. In interviews, most Title I teachers (88%) responded that "limited English speaking" ability was a criterion for student selection into the program. The recommendations of the NPS classroom teacher (75%) and the Title I teacher (50%) were also identified as selection criteria.

Other criteria of selection reported by the eight interviewed teachers were: principal recommendations, low achievers in reading, low achievers in math, Spanish/English spoken in the home, severely disabled readers, and test results.

Participants in Selection. All interviewed teachers identified the Title I teacher as a participant in the selection of children for the program. Eighty-eight percent of the teachers recognized the classroom teacher and/or Title I guidelines as a determinant in the selection.

Of the 42 respondents to the survey, 98% indicated that the Title I teacher participated in the selection of

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* These results are based on the responses of seven of the eight teachers teachers [sic] interviewed.

the children in the program, 9% named the nonpublic school principal, 100% selected the classroom teacher, 17% named the guidance counselor and 43% named other Title I teachers.

Most Common Learning Problems. The survey listed eight learning problems and asked teachers to identify the three most common. The teachers' responses were as follows: problems from other achievement areas, 10%; attention problems, 19%; language problems, 81%; behavioral problems, 12%; poor listening skills, 34%; poor self-image, including fear of failure, 35%; retention skills, 33%; and general problems in concept formation, 29%.

The most commonly identified learning problems reported by the eight interviewed teachers were the four language skills; listening (86%), speaking (57%), reading (29%), and writing (29%). These were the only areas identified by more than one teacher. Additional problems mentioned were motor development, perceptual development, conceptual development, auditory discrimination, cognitive skills, motivation, following directions, transition from Spanish to English, vocabulary and language structure.

Teaching Methodology

Major Areas of Focus. The survey requested teachers to specify the major areas of focus for their instruction. The responses were: develop speaking skills, 100%; develop listening skills, 98%; conceptual development, 91%; develop cognitive skills, 83%; experiential development, 86%; develop writing skills, 64%; and develop reading skills, 64%.

All teachers interviewed named the four basic linguistic skills—listening, speaking, reading, and writing, as major areas of focus of instruction; 25% of the teachers indicated cognitive development as an area of focus. Other areas of focus named by 13% of the teachers included creativity and experiential development.

Motivation. When asked "What methods or techniques do you use to motivate your students?", surveyed teachers responded: games, 90.5%; graphs for self-tracking, 11.9%; reward system (stars, stamps, etc.), 83.3%; use of manipulatives, 69.0%; and other pupil self-evaluative techniques, 31.0%. This question was followed by "If you have noticed behavioral changes that indicate increased motivation, check the *two most obvious ones.*" The responses were: 26%, willingness to try more difficult materials; 71%, more pupil participation in Title I classroom activities; 17%, know what to do without asking; 29%, more attentive; 17%, greater rapport with teacher; and 38%, better self-image.

When the eight interviewed teachers were asked what methods or techniques were used to motivate students, many teachers responded "anything that will work." Specific motivation techniques included audio-visual aids (50%), games (50%), songs (38%), dramatizations (25%), language masters (25%), pictures (13%), and purposeful errors (13%).

The behavioral changes noticed by teachers that indicated increased motivation were increased participation (50%), "happy faces" (50%), and increased confidence (25%). Teachers also noted that students paid more attention (13%) and they seemed more mature (13%).

Peer Tutoring, Independent Study, and Individualized Instruction.

Teachers were asked if students were involved in peer tutoring, self-evaluations, or independent study. On the survey, the responses were: peer-tutoring, 52%; independent activities, 57%; and self-evaluation, 6%.

During the interviews most of the teachers (88%) indicated that their students participated in peer tutoring. This was usually informal, one student helping another. Seventy-five percent of the teachers reported that students evaluated themselves in some activities and 38% of the teachers indicated their students were involved in independent study (reading books independ-

ently, playing games independently, and/or doing rexographs independently).

Pupil Assessment. Table 1 summarizes the teachers' responses on the survey to pupil assessment methods. Surveyed teachers were asked to indicate the two major purposes of the initial pupil assessment: 38%, to individualize instruction; 40%, to organize group work; 21, [sic] to evaluate progress; 48%, lesson planning; 2%, record keeping; 40%, diagnosis; and 12%, teacher self-evaluation.

Eighty-eight percent of the eight interviewed teachers indicated that the Title I program assessment (Test of Basic Experience or the Stanford Achievement Test) was used to evaluate the pupil's ability. In addition, all interviewed teachers reported that students were also formally assessed by means of the Oral Teacher Interview and 63% of the teachers assessed their students informally during the first weeks of school through observation, picture discussions, games worksheets, etc.

TABLE 1

Percent of Title I ESL Teachers Using Various Assessments At the Beginning of the Year and During the Year

Assessments	Method used at beginning of the year	Method used during year
Title I program assessment	55%	55%
An informal reading test	2%	10%
A standardized norm referenced test	79%	67%
A standardized criterion referenced test	10%	12%
A teacher made criterion referenced test	52%	50%
Conference with classroom teacher	76%	81%
Classroom observation	0%	74%

All of the eight interviewed teachers used the results of the initial assessment to individualize instruction, to organize group work, and to plan long range lessons.

Fulfilling Title I guidelines and diagnosis were other purposes the teachers reported for the initial assessment.

During the interviews it was found that all teachers evaluated the students during the year through observations. Teachers observed classroom performance as well as out-of-class language performance. Thirty-eight percent of the teachers indicated they administered teacher-made or unit tests, 100% used the Spring administration of the SAT or TOBE test for reassessment, 25% distributed and evaluated rexograph sheets and 25% of the teachers based their reassessment on the evaluation grid.

Pupil reassessments were used by all interviewed teachers to individualize instruction, organize group work, and to fulfill the Title I guidelines.

Student Records. All interviewed teachers kept records of attendance, pre- and posttest standardized scores, individual profile charts, and pupil's work folders.

Most of the teachers kept records of parent conferences (88%), conferences with nonpublic school staff (88%), and referrals to supportive services.

Interviewed teachers were asked to identify their duties related to teaching. All teachers named the following duties as related to teaching: administer standardized tests, implement the instructional program, conduct needs assessments, organize instructional groups, write lesson plans, adapt or create materials, maintain pupil records, communicate with parents, and confer with classroom teachers.

Materials Used. All interviewed teachers were satisfied with the appropriateness of the materials and many in fact, gave high praise to the choice of materials. All teachers indicated that the Title I central staff and the Title I teacher chose the materials to be used. Some teachers volunteered that it was ultimately a joint effort between the central staff people and the teachers in the program; this issue was discussed at the general staff meetings.

Paraprofessionals. Of the six interviewed teachers who did not have paraprofessional assistance, two said they would like to have this assistance. It should be noted that paraprofessionals are employees of decentralized programs and as such, are hired, supervised and evaluated by community school district staff.

Paraprofessional staff when assigned by community school districts will, under the guidance of the Title I teacher: (1) work with the selected pupils on a one-to-one or small group basis on specifically planned activities geared to foster skills as diagnosed and taught by the Title I teacher; (2) assist with preparation of materials; and (3) assist with clerical and housekeeping tasks.

Pupil Selection. The pupil selection process was viewed as adequate by all teachers interviewed.

Support Services. The results of the survey asking teachers to specify all those who refer pupils to Clinical and Guidance Systems were: 98%, ESL Title I teacher; 81%, other Title I teachers; 98%, classroom teachers; 81%, principals; and 21%, parents. When asked to rate the Clinical and Guidance Services the survey respondents indicated:

Extremely effective	19%
Very effective	37%
Somewhat effective	35%
Don't Know	9%

It was reported by the interviewed teachers that pupils are referred to Clinical and Guidance Services by the classroom teacher (75%) or the Title I teacher (63%). Often the ESL teacher would talk to the regular classroom teacher informally and then decide to jointly request clinical and guidance services. One teacher (13%) said she never involved herself in referrals. All but one of the interviewed teachers (87%) felt the Clinical and Guidance Services Program was effective. One teacher

did not know the effectiveness of the services because she had never referred students to these services.

When asked what kind of support they received from the nonpublic school principal, the eight interviewed teachers generally spoke of the principal's cooperation. All of the interviewed teachers indicated that the principal provided orientation to school procedures. Eighty-eight percent of these teachers reported that the school principals encouraged coordination with the regular classroom teachers, initiated or were available for dialogue with the Title I teacher, and took care of scheduling matters.

On the survey, 86% of the teachers stated that the Title I central staff provided administrative visits, 89% reported supervisory guidance, 95% specified staff training meetings, and 98% named instructional materials.

The Title I central staff was reported by the interviewed teachers to provide: administrative visits (88%), supervisory guidance (88%), staff training (88%), and instructional materials (65%).

Parent Contact

Number and Frequency. The results of the survey indicate that the teachers meet an average of 35% of the parents. Thirty percent of the teachers reported seeing parents on a continuous basis, either weekly or monthly: 14.8% of the teachers saw some parents weekly; 16.2% reported monthly contact; 67.2% saw parents every reporting period; and 80.8% saw parents on a yearly basis.

The eight interviewed teachers met with 5% to 95% of the parents (four of the teachers met with 40%-50% of the parents). Seventy-five percent of the teachers reported that this contact was yearly, one teacher indicated weekly contact with some parents.

Method. Teachers, responding to the survey, indicated contact with the parents was face-to-face (78.3%

of the teachers reporting); by telephone (12.8%), by written communications (35.2%), and by parent-tutorial workshops (28.0%).

Interviewed teachers reported that they communicated with parents in a variety of ways: face-to-face (63%); telephone (38%); written communication/written progress reports (100%); parent-tutorial (13%); and through the classroom teacher (13%).

Initiation. Eighty-three percent of the Title I teachers indicated on the survey that they initiated the majority of teacher-parent contacts. In addition, 5% named the nonpublic school classroom teachers; 7% indicated the parents; and 2% reported the pupils initiated the majority of parent-teacher contacts.

All of the eight interviewed teachers indicated that contacts were initiated by the Title I teacher. One teacher identified parents as making initial contacts, and one teacher identified the regular classroom teacher.

Interviewed teachers indicated that parents are typically involved in "individual conferences to discuss the child's progress." Seventy-five percent of the interviewed teachers indicated that parents visit the classroom to observe.

During the interviews the teachers were asked if parents were involved with their children in activities at home related to their classroom teaching. The teachers responded that they were sure some parents were involved because notes to parents with suggestions for reinforcing communicative activities were given to the children to take home at least one time each year. The teachers, however, could not give a clear indication as to the degree to which these activities were actually carried out.

Major Concerns of Parents. Most teachers indicated on the survey that parents were concerned that their children were approaching grade level academic performance (81%). Other concerns were promotion (0.5%, and obtaining special services (2%).

Interviewed teachers reported that parents are concerned that their children will master the English language (63%), can read (38%), will be able to function in regular classes (25%), will not lose the first language (25%), and will behave appropriately in the classrooms (13%).

Recommendations

Survey results. On the survey, teachers were given six recommendations and asked to indicate which was most important for the improvement of the Title I English as a Second Language Program. The responses were:

(1) More Title I teacher involvement in materials selection—38%*

(2) More opportunity for coordination with the classroom teacher—26%

(3) More workshops based on Title I teacher input (re: teaching techniques)—17%

(4) Fewer students more often—12%

(5) No significant improvement is needed—7%

(6) More opportunity for coordination with other Title I personnel—2%

General. Most teachers interviewed responded that they were satisfied with the services given to children in the Title I Nonpublic School Program. Three teachers answered that the students needed more contact hours during the week.

Staff Development. Most teachers said that the staff development program was very good. Two (25%) said

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* It should be noted that teachers may not always be aware of the restrictions placed on the selection of materials by the Board of Education vendor guidelines and the federal restrictions on the content of materials in funded programs.

that although the staff development was good, they would like to have even more of it.

Coordination with Nonpublic School Classroom Teachers. The Title I teacher confers periodically with the nonpublic school classroom teacher to ascertain the specific needs and weaknesses of the assigned pupils. Evaluation of pupil achievement and progress reports are reviewed with nonpublic school staff. It should be noted that Constitutional limitations and judicial decisions determine the extent to which Title I staff are involved in the nonpublic school instructional program.

Coordination with Regular Classroom Teachers. The coordination with the regular classroom teacher, although informal, was ongoing and flexible. One teacher suggested regular classroom teacher could observe some ESL classes.

IV. *CLASSROOM OBSERVATION SUMMARY*

Classroom Characteristics

Lighting was usually adequate. In one particularly dark room, however, the lights should have been turned on. Orderliness was apparent in all rooms. There were clearly delineated areas for different kinds of activities. The same somewhat dark classroom mentioned above was also rather small in space. It seems to be a converted hall/staircase. It was, however, being used as resourcefully and optimally as possible. Ventilation was generally good, with the exception of two classes which needed a little more air.

General Observations. Generally there was a greeting routine in which the days of the week, months of the year, and the numbers—both cardinal and ordinal—were practiced. The objective of most lessons was readily perceived. The materials were adequate for the lessons. The activities coincided with the lessons' objectives. Some teachers said their ESL methodology was either audiolingual or eclectic. They used Carolyn Graham's jazz chants

effectively to develop pattern drills. The students appeared to enjoy these activities.

Observation Checklist: Teacher

The ESL classes were conducted according to a small group instructional model. Students were observed to be attentive to the teachers as they gave pre-activity directions or orientation comments. The teachers modeled appropriate linguistic behavior and provided encouragement and reinforcement through a variety of oral and written comments. The teachers worked along with the children while singing jazz chants, frequently taking a pupil's role while a pupil was the jazz chant leader. Pupils were observed to be attentive to other pupils during discussion periods and other activities. Pupils' work was displayed in all classrooms.

TABLE 2

OBSERVATION CHECKLIST: TEACHER (N=8)

Activities	% of Teachers Observed
1. Encourages children to work independently	75%
2. Encourages children to work together	88%
3. Talks with children about their activities for the instruction period	100%
4. Works along with children	88%
5. Helps children solve academic problems	100%
6. Encourages/reinforces children in their work	100%
7. Gives feedback to children on their progress	100%
8. Pupil diagnosis/prescription	63%
9. General discussion with pupils	13%
10. Allows for pupil choice in activities	50%
11. Displays children's work in the classroom	100%

V. *SUMMARY OF INTERVIEW WITH ESL PROGRAM COORDINATOR AND FIELD SUPERVISOR*

Introduction

The interviews with the program coordinator and the field supervisor were both two and one-half hours long. The coordinator has been involved with this Title I program for 11 years—two years as a teacher, three years as a field supervisor, four years as acting coordinator, and one year as coordinator. The supervisor had been in the program as a teacher for six years and as a field supervisor for the past four months. Their responses are reported together when the two agree; when they disagree, their responses are differentiated.

Program Considerations

Goals. Both the field supervisor and the program coordinator identified the goal of the program to be instruction in English—providing the child with both a knowledge of the language as well as the culture. They added that the child is made to feel confident in adjusting to the new environment by having teachers refer to the pupils' native culture and help the child retain the native language. The development of these goals has been on-going. The Title I coordinators, teachers, administrators and general staff contribute to this on-going process. The field supervisor stated that the implementation of these goals has changed since the beginning of the program. Initially the focus of the instruction was audiolingual; today it is eclectic. The field supervisor stated the curriculum has changed since the beginning of the program and the goals have become comprehensive.

Strengths and Needs. The greatest strength of the program was identified as the high level of teacher training and dynamics—all teachers have ESL skills. There are a variety of materials to meet the needs of the individual student, a result of the teachers' input in ordering

these materials. In addition, the good organizational structure was seen as a strength of the program. When asked what parts of the instructional program were in need of strengthening, the field supervisor felt that he needed to spend more time in the field; he felt that there were too many nonfield responsibilities which limited his time. The program coordinator also indicated a need for more time to see the teachers and make classroom observations. The program coordinator also felt that more teacher training demonstrations were needed so that the teachers could and would implement the curriculum more effectively.

Next year the curriculum is being revised. Some cognitive goals are being expanded or combined, and there will be modifications in the sequencing of instructional items.

Purpose of the Program Assessment. The program assessments give an overall picture of the students' achievement by testing the individual's receptive and productive language. The program used standardized tests and oral language interviews to diagnose and assess pupil achievement. The program coordinator feels, however, that the informal day-to-day evaluations provided the most meaningful assessments.

Instructional Considerations

Approaches to Instruction. An eclectic approach to instruction is utilized in the ESL program. This includes speakers, demonstrations, traditional teaching methods, jazz chants, textbooks, and silent reading. Teachers stated that they used any method that would help to motivate the students. Audiolingual methods are also used.

Daily Lesson. The daily lesson is correlated to the curriculum guide and usually includes a greeting, review of items, audio-visual presentations, practice of newly taught items, and an evaluative summary.

Motivation. The coordinator and field supervisor were asked the question, "What methods and techniques are

teachers expected to use in motivating students?". There response was that teachers use any method and/or technique that is appropriate to the level of the students, and that will serve to motivate the students.

Overlap Between What is to be Taught and What is Tested. Regarding standardized program assessments, the overlap between what is taught and what is tested is rather limited in the SAT test, but a bit more satisfactory in the TOBE instrument. However, informal teacher assessments address themselves completely to the content that is taught.

Introducing New Ideas, Approaches, Topics. In the past three years, there has been a shift in the methodology from an audiolingual focus to one that is more eclectic, including greater emphasis on reading. New ideas, approaches, and topics were introduced after the initial assessment of need and followed by discussions, by groups of teachers interested in the curriculum and proposed changes.

Student Considerations

Reporting of Student Progress. Student progress is reported to students by immediate feedback and unit-end assessments. Feedback is given to parents at various times during the year through progress reports (See Appendix), parent meetings, and demonstration lessons. The principal as well as the classroom teacher gets on-going feedback on the progress of the pupils.

Retention of Students. Retention of students in done according to the mandate to serve those with the greatest needs. There is no set rule for how long a student may remain in the program, but it is usually no more than three years. The total time may depend upon the amount of student-teacher contact.

Personnel Considerations

Supervisory Staff's Responsibilities. The supervisory staff makes site visits for the purpose of giving addi-

tional assistance and monitoring the program. Every teacher is formally evaluated once a year. The program coordinator stated that she meets regularly with the other Title I coordinators. In addition, the supervisory staff meet with the principals, the Title I staff, the paraprofessionals and parents to discuss aspects of the program and possible changes.

Strengths and Needs of Instructional Staff. The teachers' enthusiasm, their willingness to innovate, and their training are seen as the strengths of the instructional staff. The program coordinator stated that teachers need to become stronger in the area of record keeping. New forms were to be developed this coming year to help in this area. The field supervisor indicated that the teachers need to expand their awareness of the cultures of the pupil target population.

Recommendations

General. The program coordinator suggested that there be earlier identification of Title I eligible students, as well as an earlier allocation of monies. The field supervisor added that there is interference with the initial teacher placements because of budgetary problems.

Staff Development. Additional training sessions were recommended for the teachers. The field supervisor suggested more input from outside agencies.

Materials. It was recommended that more monies be allocated to allow a wider variety and a larger number of materials, especially textbooks.

Para-professional Services. The field supervisor recommended that para-professionals assigned to this program be screened adequately for linguistic preparation in order to serve as models for the pupils even though the Title I program has no control over the selection of paraprofessionals. This selection is made by the Community School Districts.

Pupil Selection. No recommendations were made in this area. Both the program coordinator and the field supervisor felt satisfied with this process.

Coordination with Regular Classroom Teachers. Although there is informal contact, the program coordinator suggested that structures be studied within the constraints of the present regulations to increase the communication between the ESL teacher and the regular classroom teacher.

Coordination with Other Title I Staff. The program coordinator felt that this coordination was good. The field supervisor recommended that the guidance personnel address the ESL staff. He also suggested that there be more interaction of cognitive skills gained in the ESL classes with those gained in reading, language arts, mathematics, etc.

VI. *EVALUATION CONCLUSIONS AND RECOMMENDATIONS*

The Title I English as a Second Language Program offers teachers a wide variety of materials and approaches to utilize in teaching English. The teaching approach was characterized by the teachers and the program coordinator as eclectic. Overall, teachers appeared enthusiastic about the program and offered praise for the materials and staff development received during the year.

In all classrooms visited, teachers were observed encouraging and reinforcing children at work. The atmosphere in many of the classrooms was lively. Jazz chants were used effectively to develop pattern drills; children appeared to especially enjoy this activity.

A recommendation voiced by 26% of the teachers and the program coordinator was that efforts be made, within the program guidelines, to increase communications between the classroom teachers and English as a Second Language. The evaluation team supports this recommendation.

Regarding the implementation of the revised curriculum during the 1980-1981 year, the following recommendations are offered: 1) efforts should be made to monitor the implementation of the revised curriculum, 2) obtain feedback on the effectiveness of the curriculum from classroom teachers, and 3) the impact of the curriculum on program objectives should be assessed.

The last recommendation relates to the development of the program assessment instruments. The program coordinator stated the information presented on the standardized test, did not adequately overlap with the program's curriculum and instructional objectives. Therefore, it is recommended that the program administrators begin to develop more appropriate program assessments.

DEFENDANTS' SUPPLEMENTAL EXHIBIT E

OEE
EVALUATION
REPORT

FINAL EVALUATION REPORT
ESEA TITLE I
Project Identification Number: 5001-64-01626

ESEA TITLE I
NONPUBLIC SCHOOL PROGRAMS
CLINICAL AND GUIDANCE SERVICES
1979-1980

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I. *PROGRAM DESCRIPTION*

The Title I Clinical and Guidance Services Program, hereafter called the Clinical and Guidance Program, served 8,662* nonpublic school students in grades K-12 at 178 sites. These students received Title I instructional services and were judged to be in need of clinical and/or guidance services. The basic assumption underlying this program, as stated by the Title I Nonpublic School Director, was that

> . . . a large number of pupils who participated in our program suffer educational deprivation for a variety of causes encompassing physical, intellectual, emotional and social development. The remediation process cannot attempt to deal only with one causative factor in isolation, and ignore the other determinants that may be interfering with the child's academic progress. Thus, we provide remediation through a multiple thrust of instructional and supportive programs, which provide of equal importance in compensation, for the multiple causes of the child's educational deprivation.

The major components of the program were individual and group sessions with guidance counselors, social workers and/or psychologists.

Students entered the Clinical and Guidance Program through referrals by the Title I instructional teacher, the nonpublic school classroom teacher or the principal. A pre-rating scale was completed for each child that was accepted into the program. (See Appendix). The guidance counselor and/or social worker determined which approach was best suited to the student and provided the needed services. The clinical and guidance staff might refer a pupil for diagnostic evaluation to a psychologist

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* Duplicated count, students could be enrolled in more than one Title I Instructional Program.

who served groups of schools on a pupil referred basis. If students were diagnosed as having physical and/or intellectual deficiencies that required special education, they were referred to the appropriate place (i.e. classes for brain injured pupils, certified retarded or mentally defective, emotionally handicapped, etc). The program also provided individual and group work with parents of referred pupils. Nonpublic school classroom teachers and Title I instructional teachers were invited to case conferences and were involved in formulating treatment plans.

The program operated under the regular practices and procedures of the Bureau of Child Guidance and the Bureau of Educational and Vocational Guidance. The staff included 3.5 full-time equivalent (FTE)* supervisors, 1.5 FTE coordinators, 72 FTE guidance counselors, 9.9 social workers, 23.9 FTE psychologists and 526 hours of time of psychiatrists. In addition, secretaries and clerks were employed by the program.

The purpose of this evaluation report is to report student achievement data, describe program implementation from the teachers' and coordinators' perspectives, and to indicate directions from a more in depth evaluation during the 1980-81 year.

II. *DATA ANALYSIS*

Evaluation Objectives And Tests Used

Students referred to the Clinical and Guidance Program were to achieve gains in performance in reading, mathematics, and English as a second language (ESL), greater than would have been expected in the absence of treatment. Student achievement was evaluated according to the USOE Model Al, using the pretests and posttests administered in the Title I instructional programs.

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* FTE: One FTE is equivalent to one full-time staff position. Some staff persons are hired on a part-time or per diem basis; therefore, the amount of services is expressed in FTE's in lieu of reporting the number of staff employed.

Reading improvement was evaluated on the basis of the performance on the Stanford Early School Achievement Test, for pupils in grade 1; the Stanford Diagnostic Reading Test, for pupils in grades 2 through 8; and the Stanford Test of Academic Skills, for pupils in grades 9-12.

Mathematics achievement was evaluated on the basis of the performance on the Stanford Early School Achievement Test, for pupils in grade 1; the Stanford Achievement Test for pupils in grades 2-8; and the Stanford Test of Academic Skills, for pupils in grades 9-11.

Student performance among those students receiving services from the Clinical and Guidance Program and ESL was not evaluated. This was done because the standardized instruments used in ESL have not been normed on appropriate populations and could not be expressed as Normal Curve Equivalents (NCE's).

Analyses Performed And Results

Performance gains as determined by standardized tests. In order to determine performance gains in cognitive areas, it was necessary to identify the test records of students receiving clinical and guidances services. A computer match was performed between the test record files submitted for the Title I instructional programs, and the file identifying students receiving clinical and guidance services. The computer retrieved all students whose names and schools were coded identically on the two sets of files.

From "retrieved" students, all records were selected for analysis which met the following criteria: pretest and posttest raw scores were available; and the raw scores could validly be expressed as Normal Curve Equivalents. The effect of this criterion was to exclude (1) students tested out-of level (because fall or spring norms were

lacking); (2) all ESL tests (which lack full sets of norms valid for ESL students).

There were 4,341 test records available for analysis for students in the Corrective Reading Program, 368 for students in Reading Skills Centers, and 3,204 for students in the Corrective Mathematics Program. Scores for these students are presented in Tables I, II, and III.

These data on the academic performance of pupils do not separate the influence of the remedial instruction from the gains attributed to the Clinical and Guidance Program. To separate these two variables is not possible within the framework of the present program. First, no fair comparisons can be made between children receiving clinical and guidance services *plus* remedial instruction with children *only* receiving remedial instruction, since all children needing clinical and guidance services are referred for service, and are by definition, "different" than those not being referred for services. To randomly select children, who need services, to become part of a control group not to receive service would be considered unethical by school staff and in violation of the Title I guidelines.

Second, since the children receiving clinical services have problems which inhibit their academic progress, one cannot assume that these children will perform better than or as well as other remedial students not receiving clinical and guidance services.

The third factor is an extension of the above two factors. One cannot measure the effects of varying hours of service received from clinical and guidance for two reasons; receiving more hours of service does not mean higher gains since the child with more severe problems received more hours of service; and, no baseline academic performance (performance of children needing clinical and guidance services, but- not receiving them) can be obtained from which to calibrate NCE gains based on hours of service.

However, the children receiving clinical and guidance services do show NCE's gains. This is commendable since these children, already receiving remedial services, were identified as having problems further affecting their academic performance.

Although there is no true comparison group, one could compare a pupil's rate of growth the year before receiving clinical and guidance services with his or her rate of growth the first year in the Clinical and Guidance Program. If it were possible to explain all of the effects of the intervening variables such as maturation, history, etc., the effects of the Clinical and Guidance Program could be better assessed. Similar case study methods are currently being used to study treatment effects on individuals where comparison groups do not exist or are not relevant.

TABLE I

TEST RESULTS FOR CORRECTIVE READING STUDENTS RECEIVING SERVICES FROM CLINICAL AND GUIDANCE

Grade	Test	N	NCE (mean) Pretest	NCE (mean) Posttest	NCE gain
1	SESAT—Environment	73	22	32	10
	SESAT—Aural Comp.	76	24	33	9
	SESAT—Letters & Sounds	75	33	40	7
2	SDRT Red	536	27	33	6
3	SDRT Green	680	25	37	12
4	SDRT Green	749	28	35	7
5	SDRT Brown	696	24	34	10
6	SDRT Brown	529	25	35	8
7	SDRT Brown	347	28	35	7
8	SDRT Brown	239	28	39	11
9	Level I	201	14	23	9
10	TASK Level I	112	17	23	6
11	TASK Level II	26	7	21	14
12	TASK Level II	2	18	25	7

TABLE II

TEST RESULTS FOR READING SKILLS CENTER STUDENTS RECEIVING SERVICES FROM CLINICAL AND GUIDANCE

Grade	Test	N	NCE (mean) Pretest	NCE (mean) Posttest	NCE gain
4	SDRT Green	31	25	36	11
5	SDRT Brown	74	24	35	11
6	SDRT Brown	83	23	34	11
7	SDRT Brown	95	26	35	9
8	SDRT Brown	85	28	39	11

TABLE III

TEST RESULTS FOR CORRECTIVE MATH STUDENTS RECEIVING SERVICES FROM CLINICAL AND GUIDANCE

Grade	Test	N	Mean NCE Pretest	Mean NCE Posttest	NCE gain
1	SESAT	24	30	51	21
2	SAT, PRIM 1	427	27	32	5
3	SAT, PRIM 1	570	25	32	7
4	SAT, PRIM 3	586	28	37	9
5	SAT, INTERM 1	564	29	34	5
6	SAT, INTERM 2	426	27	36	9
7	SAT, ADVANCED	250	27	36	9
8	SAT, ADVANCED	172	28	34	6
9	TASK Level I	100	30	39	9
10	TASK Level I	69	31	36	5
11	TASK Level I	15	*	*	*
12	TASK Level II	1	17	29	12

* Although Level II was specified in the evaluation design, Grade II students were actually tested with TASK, Level I. Eleventh grade norms are unavailable for Level I, so that results are not reported for this grade.

II. [sic] *CLINICAL AND GUIDANCE STAFF INTERVIEWS SUMMARY*

Introduction

Data for this section of this report were collected in seven schools during the period from May 19, 1980, to June 6, 1980. The sites were selected randomly from a stratified sample of schools in the Title I Clinical and Guidance Program. A small random sample of clinical and guidance staff were also interviewed in order to identify areas for more intensive evaluation during 1980-1981. The interview form was constructed, pretested and revised by the Office of Educational Evaluation with the assistance of Title I central administrators. The interviewer was trained in the use of the form before the interviews began. All interviewed personnel were informed that the purpose of the interview was to feed information back to the program coordinators and the Office of Educational Evaluation. They were assured complete confidentiality and anonymity to their responses. Each interview took between 15 and 60 minutes. The average time for the interviews was 34 minutes.

This section of the report is based on interviews with eight guidance counselors, three psychologists and one social worker.

The functions of the various clinical and guidance staff are as follows:

> *The Guidance Counselor shall:* study pupil needs through the examination of records, observation, consultation, and interviews; assist pupils in evaluating their abilities, aptitudes, attitudes, and interests and interpret these in planning appropriate intervention; provide individual and group counseling; develop group techniques as a method of providing educational guidance, career exploration and developing insight into personal and social problems;

interpret pupil data to staff members and cooperatively plan and carry out measures to meet pupil needs; interpret pupil data to parents and seek parental cooperation in formulating and carrying through appropriate plans; work with special school services such as the Evaluation and Placement Units to insure that identified pupils are placed in optimum situations and cooperate with community agencies to provide services to referred pupils.

The School Social Worker shall: study the child, particularly his/her family and life situation, to discover physical, social or emotional factors which have inhibited learning; provide individual and group therapy to students which will facilitate the development of satisfactory interpersonal relationships and work habits; assist the learning disabled student by working both with the child and with the parent; help the staff and parents to respond to the student through new prescriptive approaches which make learning a more satisfying and positive experience.

The School Psychologist shall: study referred children and, through the use of psychological techniques, evaluate intelligence and achievement levels, growth and adjustment; participate in case conferences and offer suggestions to instructional staff for prescriptive approaches to reverse patterns of academic failure; provide therapy for children and their families both individually or in groups in order to help facilitate more satisfying ways of coping both in the learning and total life situation; confer with parents of pupils with special learning disabilities to extend their understanding of their child's problems and, if indicated, elicit parental cooperation in effecting special class placement.

The Psychiatrists shall: Examine those pupils referred by the counselor, social worker or psychologist

where psychiatrict [sic] diagnosis is necessary in order to effect proper placement and to define treatment needs and goals.

Major Focus For Improvement of Pupil Functioning In Academic Areas

Respondents were asked: "In accordance with the Title I guidelines, what are the major areas of focus of the clinical and guidance component to improve pupil functioning in the academic areas?" Most answers regarded helping underachieving students to realize their full potential by working on learning and/or emotional problems that might be causing the underachievement.

The Clinical and Guidance Program staff perceived their role to be a liasion between the school, the parents, other professionals (e.g., psychologist, guidance counselor, etc.), the public school system and outside agencies. All of the interviewed staff indicated that their major foci were individual counseling, consulting with Title I nonpublic school staff, serving as a resource person, and enlisting parental aid. Also mentioned as areas of major focus were group counseling (92%), and diagnosing learning difficulties (67%).

Activities And Duties

All of the clinical and guidance personnel were asked to specify their duties and activities. The response of the one school social worker interviewed was: (1) to encourage teachers to respond to the child through individualized approaches; (2) to encourage parents to respond to the child through individualized approaches: (3) to counsel parents, students, teachers and principals; (4) to make referrals to other community agencies; (5) visit homes; (6) to study the family and life situations of the child to identify problems; (7) to provide individual and group therapy to students; and (8) to counsel the learning disabled child and family.

Three school psychologists were interviewed. When asked to state their duties and activities, all three responded: (1) to evaluate intelligence and achievement levels; (2) to evaluate learning patterns; (3) to participate in case conferences; (4) to advise instructional staff on helpful prescriptive approaches (5) to confer with parents of learning disabled children; (6) to elicit parental cooperation for appropriate placement; (7) to interpret test findings to parents; (8) to interpret test findings to teachers. Two of the three also said their activities included monitoring the child's progress, classroom observations and referrals to outside agencies.

When asked to identify main duties and activities, the eight guidance counselors all responded: (1) to examine records, observe, consult and interview to determine pupil needs; (2) to plan interventions; (3) to provide individual and group counseling; (4) to develop group techniques for providing guidance; (5) to plan cooperatively with parents; (6) to work cooperatively with special school services on placements; and (7) to cooperate with community agencies to provide services to referred pupils. Most of the staff also indicated that their duties included assisting pupils in self evaluations, interpreting pupil's self evaluations, interpreting pupil data to the other staff, interpreting pupil data to parents and planning cooperatively with the staff. Two guidance counselors also said they help provide information to the students about high school placement.

Pupil and/or Program Records

All of the clinical and guidance personnel indicated that they keep pupil and program records. All of the personnel kept contact sheets, case lists, weekly or monthly logs and referral sheets. Also mentioned were eligibility lists, pre- and post-rating scales (submitted by the referring teacher for each child), parent contact forms, confidential case files, and consent forms.

Supportive Services

Central Staff. Clinical and guidance personnel were asked what supportive services they received from Title I supervisory staff. All of the personnel mentioned supervisory visits, supervisory guidance and evaluations, in-service training, and materials.

In addition to the purchase of bulk materials for the total program, the clinical and guidance staff are provided with a cash allotment in order to individualize the purchase of manipulative materials.

Other Adults. Response was fairly consistent to the question, "When you are working with pupils to enhance their academic functioning, what adults do you involve in your treatment plan?" All clinical and guidance personnel indicated the parents and/or family, the Title I referring teacher and the regular classroom teacher. Most named the principals and some interviews also mentioned other clinical and guidance staff and the Title I instructional staff.

Recommendations

General Recommendations. General recommendations made by more than one clinical and guidance staff member included: (1) provide more days in each school, more staff and more clinical and guidance services (that is, expand the program to serve more children; (2) broaden the guidelines to allow more time for other services (i.e. workshops); (3) more Title I classes, perhaps for learning disabled children; (4) provide more work with community resources; (5) set aside more space in schools; (6) provide telephones for Title I personnel. One of the psychologists recommended research in preventive techniques and psychologists training in group dynamics.

Staff Development. Several of the staff members suggested additional workshops that focus on refining professional skills, learning about new laws and new diag-

nostic instruments, and sharpening sensitivity to peoples of other cultures.

Materials. Staff members stated they would like additional materials including more professional reference books and manipulative materials.

Pupil Selection. Selection of the students to the Clinical and Guidance Program is made by the clinical and guidance staff member together with the Title I teacher from among eligible students serviced in the Title I instructional programs. Many staff members expressed frustration at not being able to work with students who were not enrolled in any Title I instructional program, since the staff had requests to service them.

One staff member suggested setting up a maintenance system to follow-up on students discharged from the Title I instructional programs.

Coordination with Regular Classroom Teachers. Most of the interviewers said they meet with the regular classroom teachers informally, usually at lunch, since many teachers in the nonpublic schools do not have any free time. In addition, one teacher mentioned the importance of have definite times scheduled at the beginning of the school year for student appointments in order to facilitate cooperation between the Title I clinical and guidance staff and the nonpublic school classroom teacher.

Classroom teachers are invited to all case conference at which time individual student progress is assessed. Classroom teachers are also involved in formulating comprehensive treatment plans.

Coordination With Other Title I Staff. Eleven members (83%) of the clinical and guidance staff expressed satisfaction with the coordination with other Title I Staff. During formal and informal conference periods student progress was discussed. Two staff members found it difficult to meet with other staff members because of conflicting schedules and staff changes.

IV. *SUMMARY OF INTERVIEWS WITH PROGRAM COORDINATORS*

Program Consideration

Goals. The aim of the program was to help children function better in the basic areas of reading and mathematics. The program approached their goal by obtaining a diagnosis of the child's behavioral problems. These goals were developed with the academic progress of the child as the primary end. The clinical and guidance staff focussed on problems that might be interfering with academic progress.

Strengths and Needs. The clinical and guidance services were provided to students who demonstrated the greatest need for them. An interdisciplinary approach, a staff of highly trained professionals, and a good ratio of staff to children were all seen as program strengths.

The greatest need of the program was additional staff to service more children (i.e., accoridng to the staff perception).

New Ideas/Approaches/Topics. Over the last three years program changes included increased internal referrals, increased conferences with the nonpublic school teachers, and more emphasis on working with parents and the community.

Student Considerations

Frequently Occurring Problems. Underachievement was named by both coordinators as the most frequently occurring problem. They also mentioned "acting out" and withdrawn behavior as problems. One coordinator named family problems and the ability to relate to others and the other mentioned physical problems (obesity, hyperactivity and mental retardation) as the other common problems.

How Students were Referred. Students were referred to clinical and guidance services by the Title I instruc-

tional teacher, the regular classroom teacher and/or the nonpublic school principal.

How Students were Diagnosed and Evaluated. The clinical and guidance staff classroom teachers are in constant communication about the child's progress. When it becomes apparent that all of the variables which indicate change in personality show positive progress, the child is seen less often in counseling. Improved grades on report cards and testing, and positive teacher comments on behavior, form the multiple criteria for closing a case.

Social workers generally took social histories and used this information in working out a treatment plan for the child.

Guidance counselors used the pre- and post-rating form that were filled out by the referring teachers; these checklist of behaviors are the teachers evaluation of the child's needs. (See Appendix.) In addition to the teacher ratings, the counselors also conducted informal interviews with the child. All of the available information on the child is used to make a treatment plan for the child. Notes were kept in individual files on each child seen by the counselor.

How Students Were Reassessed. The child's progress was discussed with the Title I instructional teacher and regular classroom teacher; recommendations for different approaches were made if the child was not improving. This reassessment was done on a regular basis.

How the Interpretation of Diagnostic and Evaluation Procedures was Reported to Parents. Parents were involved from the beginning. They gave their consent before any testing was done and then were given feedback after the evaluation was completed. The principal, the classroom teacher, and the Title I instructional teacher were also informed of the diagnostic findings.

When Services were Ended. Treatment was terminated if the child showed academical and behavioral improvement.

Participant/Staff Ratio. Participant-staff ratio for program activities varied from one to one, to a small group meeting, (six to eight pupils) or to a larger group setting for pupils, parents and instructional staff members.

Frequency of Instruction. Duration and frequency of activities varies directly with the needs of the individual, the type of activity and the availability of staff as well as the number of days of service in a school.

Emergencies. Emergencies that occurred included aggressive and violent behaviors, suicide threats and family break-ups. The clinical and guidance staff dealt with the immediate crisis by talking to the persons involved—the child, the parents, the teacher—and referral was made to an outside agency for continuation of treatment if the child was not enrolled in any Title I instructional program.

Staff Considerations

Staff Involvement with the Title I Teacher and the Regular Classroom Teacher. A team approach was used. Clinical and guidance staff met with Title I teachers and the regular classroom teachers to discuss individual cases.

Outside Agencies. The length of time taken by outside agencies to respond to referrals varied depending on the agency and its location.

Materials. According to the coordinator, counselors are given a shopping bag full of materials to supplement the supply of manipulative materials which have been maintained at each site throughout the entire history of the program. Counselors are told that they may individualize their purchases when they are given their allotments each year. They also are informed that they may request reference books for the library. Puppets are routinely provided each year and some counselors have chosen to buy doll houses.

Recommendations

General. General recommendations included providing more supervisors and staff and building in more time for training and staff development.

Regarding staff development, last year at least seven unpaid speakers and workshops leaders volunteered their time to the Guidance Program. These volunteers came from a variety of places including state agencies, mental health clinics, hospitals and priviate [sic] institutes.

V. *EVALUATION CONCLUSIONS AND RECOMMENDATIONS*

The following concerns were expressed by Clinical and Guidance Services personnel during interviews with the evaluation concultant: [sic]

1) Clinical and guidance staff members expressed a desire to be included in the other program component staff meetings.
2) Lack of adequate space was seen as a problem in some of the schools.
3) Staff members voiced a need for more staff development.

The evaluation team recommends that the program coordinators discuss these issues with the staff during meeting times and explore ways of solving these problems within their legal and budgetary restraints.

The program coordinators expressed a desire to revise the Behavior Rating Scale. The revision of this scale has been identified by the Office of Educational Evaluation as a priority area for the investment of effort for 1980-1981.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Civil Action No. 78C-1750

BETTY-LOUISE FELTON, CHARLOTTE GREEN, BARBARA HIRUSKA, MERYL A. SCHWARTZ, ROBERT H. SIDE and ALLEN H. ZELON, PLAINTIFFS

v.

SECRETARY, UNITED STATES DEPARTMENT OF EDUCATION; and FRANK J. MACCHIAROLA, CHANCELLOR OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, DEFENDANTS

AFFIDAVIT

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

JOHN F. STAEHLE, being duly sworn, deposes and says:

1. I am Deputy Director of Compensatory Education Programs, Office of Elementary and Secondary Education, United States Department of Education ("ED"). I have worked at the Federal level on the program under Title I of the Elementary and Secondary Education Act of 1965 ("Title I") since its inception. Prior to assuming my present position, I served as Director of the Division of Grants, Policy and Administration in the Office of Compensatory Education in the U.S. Office of Education. My official duties include the immediate supervision of ED personnel charged with administering Title I at the

Federal level, and advising State educational agencies, and through them, local officials charged with administering Title I at the State and local levels. The statements in this affidavit are based on my personal knowledge except where otherwise indicated.

2. I understand that this affidavit is to be submitted as part of the trial record on behalf of defendants in this lawsuit. The purpose of my statements in this affidavit is to supplement and update the affidavit of Genevieve Dane dated April 20, 1979, originally filed in the case of *National Coalition For Public Education and Religious Liberty, et al. v. Harris, et al.*, 489 F. Supp. 1248 (D.S.D. N.Y. 1980). My official duties are virtually identical to those performed previously by Genevieve Dane.

3. Fiscal Year 1982 funds are currently being expended. The amount of Title I appropriated for Fiscal Year 1982 is $3,104,317,000. According to the most recent available data, Title I services in the 1980-81 school year were provided to 5,170,935 public school children and 192,994 private school children. Based on these figures, about 3.7% of the participants in the Title I program attend private schools. It is estimated, according to the latest available data, that about 4% or $105,200,000 of the Title I appropriation for Fiscal Year 1980 was spent on services for private school children.

/s/ John F. Staehle
JOHN F. STAEHLE

Sworn to before me this 12th day of May 1982.

Richards Warhome
Notary Public

My Commission Expires
May 15, 1983

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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78 Civ. 1750

BETTY-LOUISE FELTON, CHARLOTTE GREEN, BARBARA HRUSKA, MERYL A. SCHWARTZ, ROBERT H. SIDE and ALLEN H. ZELON, PLAINTIFFS

—against—

SECRETARY, UNITED STATES DEPARTMENT OF EDUCATION, and FRANK J. MACCHIAROLA, CHANCELLOR OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, DEFENDANTS

and

YOLANDA AGUILAR, LILLIAN COLON, MIRIAM MARTINEZ and BELINDA WILLIAMS, INTERVENOR-DEFENDANTS

REPLY AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

STANLEY GELLER, being sworn, states the following:

1. I am the attorney for the plaintiffs in this action. I submit this affidavit in opposition to defendants' cross-motion for summary judgment and in further support of plaintiffs' motion for summary judgment.

2. I have been asked by Leo Pfeffer, Esq., who was the lead counsel for plaintiffs until April 22, 1982, to an-

nounce to the Court and opposing counsel that he has withdrawn as counsel for plaintiffs as part of his retirement, on the aforementioned date, from the active practice of law. I salute a great constitutional lawyer and champion of religious liberty.

3. The main purpose of this affidavit is to call this Court's attention to the Evaluation Reports submitted as exhibits to the affidavit of Lawrence F. Larkin, dated May 12, 1982, on behalf of defendant Macchiarola, as Chancellor of the Board of Education of the City of New York, in opposition to plaintiffs' motion and in support of defendants' motion. As the Court will see when it reviews the papers submitted in connection with both motions, there are five such Reports, one for each program of remedial services provided by the City of New York, with Federal Title I funds, to nonpublic schools within the City, almost all of which are religious schools.

4. It is respectfully submitted that those Reports, carefully read, demonstrate conclusively that the Title I Program of New York City violates the Establishment Clause of the Federal Constitution. More specifically, it is submitted that the Reports show (1) that the Program necessarily involves an ever-increasing entanglement of Church and State in New York City, (2) that the Program has the primary effect of aiding Church schools, as such, and (3) that there is little merit to defendants' "child benefit" theory in this case, to the extent that such theory saves the Program from being declared unconstitutional after *Meek*.

5. For the convenience of the Court, excerpts from the Evaluation Reports are set forth in the five exhibits annexed to this affidavit. The letter of each such exhibit corresponds to the letter assigned to it as an exhibit to the Larkin Affidavit.

6. The excerpts demonstrate that, with insignificant differences in numbers, each program of remedial services places each public school teacher (referred to in the excerpts as "Title I teacher") in constant, daily com-

munication with his religious school counterpart ("regular classroom teacher") and/or the religious school staff and principal. The resulting picture is completely at odds with that painted in defendants' papers, where the Title I teacher is depicted as if he or she were hermetically sealed off in his or her Title I classroom, or "school within a school," just as the materials used in that classroom are, allegedly, locked up whenever not in use. In actual fact, as stated in one of the excerpts, the Title I teacher works "as a team" with the religious school educators, as if he or she were an integral part of the school's faculty.

7. What follows from the foregoing, as the excerpts also show, are several things, first and foremost of which, for the purposes of the present case, is that there is an ongoing dialogue between the Title I teacher and the religious educators in which they exchange information and advice, not only concerning the activities of the Title I students within the Title I classroom and concerning their Title I curriculum, but also concerning the activities of the same students and their fellow students in their regular classroom and concerning the regular curriculum.

8. Before going into the significance of this dialogue, it is necessary to call attention to something else in the Larkin Affidavit, specifically in paragraph 5, where the affiant asserts how, since April 1979, when he submitted a similar affidavit in what plaintiffs call the "*Hufstedler*" case and defendants call the "*PEARL*" case, the New York City Title I program, has allegedly remained "religiously neutral." In spelling out what he means, the affiant alludes to an absence of what would constitute gross violations of such neutrality, such as a Title I teacher's "becoming involved with the religious activities of the nonpublic schools, ..." He ends with a reference to the fact that Title I classrooms are bare of "any religious statutes [sic], symbols, pictures or artifacts, ..."

9. To begin at the end of the aforementioned paragraph, the concept that a local government *avoids* a viola-

tion of the Establishment Clause by coming into a religious school and requiring the school authorities to strip from the walls of several rooms evidence of the religion normally observed in that school and in those rooms is in itself a curious one. It seems clear that an activity which impedes religion is as much a violation of the First Amendment as one which advances it, not to mention the "entanglement" involved in the government's continuous surveillance of the rooms in question to see that they remain stripped of thier [sic] normal evidences of religion.

10. There is, however, a more serious defect in paragraph 5 of the Larkin Affidavit in the light of the exhibits annexed to that document, which, as noted, disclose that there is an ongoing dialogue between Title I teachers and religious school personnel. At first blush, it might appear that the dialogue would concern only the subjects taught in the Title I curriculum (although there is hardly a clear line between reading, writing and arithmetic when taught in a "remedial" way—and when taught, previously or subsequently, in a "regular" way). After only slightly deeper consideration, however, it should become clear that the dialogue in question concerns *how to teach* those subjects, and, more particularly, how to teach them to problem students, since that is what Title I students are.

11. Viewed in this light, the ongoing dialogue between Title I teachers and religious school personnel assumes its proper proportions. In exchanging information and advice, the participants in the dialogue are not only constantly assisting each other in teaching their mutual wards, they are also constantly educating each other about how to teach their wards, and similar types of students, and even all types of students. Assuming, as we must, on the basis of common knowledge and abundant judicial authority, that there is a basically different approach to the educational process in a public school from that in a religious school, and that the latter process is based on values that derive from the religion observed in the school, it follows that the dialogue in question involves

a constant, although subtle "indoctrination" of each set of participants with the values of the other.

12. No one would venture to say which prevail, but it does not matter constitutionally. It is the dialogue and the indoctrination which is the evil. It is made more pernicious, moreover, by a fact which the Larkin Affidavit alleges, that the Title I teachers do not remain long in any one religious school, and presumably they do not remain permanently in religious schools. That fact, if it is the fact, is presumably used in the opposing affidavit in support of the proposition that it reduces the possibility of indoctrination, one way or the other. That would appear to be a doubtful proposition. What is *not* doubtful is that any Title I teacher who has taught in a religious school for any substantial length of time can properly lay claim to having first-hand knowledge of the educational process in that school. For better or for worse, he or she becomes a "missionary," who can say—"I have been there, and I know how it works (or fails to work or compares with public schools)." It seems clear that the First Amendment prohibits the training, intentionally or inadvertently, of government employees as such missionaries, whether they prove to be for or against religious schools.

13. At this point, a *caveat* is necessary. Although plaintiffs believe that the ongoing dialogue between Title I teachers and religious school personnel is proof of one clearly pernicious effect of the entanglement that necessarily results from the Program, it is not intended by submitting such proof to indicate that plaintiffs have the burden of proving the pernicious effects of the entanglement, as opposed to the entanglement itself. As pointed out in plaintiffs' accompanying memorandum of law, the vice in New York City's Title I Program insofar as it applies to religious schools is that it poses the constant threat of violations of the First Amendment which requires a "comprehensive, discriminating and continuing" surveillance of the Title I personnel posted in the religious

schools. *That* is the entanglement, and the ongoing dialogue between Title I teachers and religious school personnel serves to show, without more, how excessive it is in this case.

14. On the subject of surveillance, the Evaluation Reports are also significant. They demonstrate that there is in actual fact no real surveillance from the viewpoint of the First Amendment conducted by those in charge of the New York City Title I Program. There is not a word in the Reports evaluating the Program at year's end which indicates that the author or authors or their assistants asked a single question of the Title I teachers or other Title I personnel posted in the religious schools relating to violations or possible violations of the First Amendment, or that they were concerned with such violations.

15. As indicated above, there is another aspect of the ongoing dialogue between Title I teachers and religious school personnel disclosed in the exhibits annexed to the Larkin Affidavit which bears serious consideration from a constitutional viewpoint. The Evaluation Reports make it clear that the information and advice exchanged by the Title I teachers and religious school personnel is by no means confined to the activities of the Title I students in the Title I classroom or to the curriculum taught in that classroom, but extends to the activities of those students in their "regular" classroom and to the curriculum in that classroom. That aspect of the dialogue might, to some extent, be present in a program of remedial services conducted off the premises of the religious school, but it is compounded when the program is on the premises, and the program teachers are in constant communication with the religious school personnel, familiar with the regular classroom activities and curriculum, and, as noted above, virtually members of the faculty of the religious school.

16. That spilling over makes it impossible to separate the aid given by the Title I Program, as now in force, to

the Title I students, as such students, and the aid given by the Title I Program to the religious schools attended by those students. There is, however, an even more substantial obstacle to apportioning the aid given by any program of remedial services between the religious school students and the school they attend, whether off or on the premises of the religious school. It is clear, and the Evaluation Reports would make it so, if it were not, that the students who need such services would, without the benefit of the same, be a drag on the rest of the student body and, therefore, on the entire educational process in the religious school. Remedial services, therefore, in a direct educational way, help the religious schools, and cannot be sustained on any "child benefit" theory.

17. Lastly, the Larkin Affidavit notes that Title I nonpublic school allocation for the 1981-82 school year is over $20,000,000 and represents 13.5% of the citywide allocation. The amount of that allocation, of course, is in addition to the aid given to the same schools in the form of textbooks (in addition to Title I textbooks), certain instruction materials (again in addition to Title I materials), and to help the schools perform various testing and reporting services, which also runs into millions of dollars. What the Larkin Affidavit does not say, and what is unknown at the present time, except to the aided schools, is the total cost of operating those schools, and, therefore, the percentage the government aid bears to the total cost. It is respectfully submitted that the government aid, inclusive of remedial services, will be so substantial in amount as to make the phrase "establishment of religion," at least insofar as it relates to the maintenance of religious schools in this city, literally true in the narrowest sense of that phrase.

18. In light of the foregoing and in light of the points made and authorities cited in plaintiffs' initial and reply memoranda of law, I respectfully request that plaintiffs' motion for summary judgment be granted, that defendants' cross-motion be denied, and that judgment be en-

tered enjoining the continuation of the New York City Title I Program as now conducted in religious schools.

/s/ Stanley Geller
STANLEY GELLER

Sworn to before me this
27th day of May, 1982

/s/ Melvin J. Nelson
MELVIN J. NELSON

Notary Public, State of New York
No. 60-2864800
Qualified in Westchester County
Commission Expires March 30, 1983

PLAINTIFFS' EXHIBIT A

EXCEPTS FROM
DEFENDANTS' SUPPLEMENTAL EXHIBIT A

(OEE Evaluation Report on Corrective Mathematics Services for 1979-1980)

Page 15 (top)

"*Student Records.* All interviewed teachers kept records of attendance test scores, pupils' progress, students' work, a checklist of skill mastery for each student, *a record of classroom teacher conferences and notes from their meetings with the nonpublic school principals.*" (Plaintiff's emphasis.)

Page 15 (middle)

"*Related Duties.* All of the interviewed teachers identified the following areas as duties related to teaching: administering standardized tests, diagnosing pupil needs, implementing instruction, participating in in-service conferences, preparing and maintaining lesson plans and pupil records, and conferring with parents. Other responses included: preparing instructional materials, organizing classrooms, *conferring with teachers and the principal,* preparing progress reports, listening to student problems, *helping with regular classroom mathematics,* and planning the schedules." (Plaintiff's emphasis.)

Page 15 (bottom)

"*Support Services*

Clinical and Guidance. The survey asked teachers to identify those staff members who referred pupils for clinical and guidance services; 91% checked the Title I Corrective Mathematics teacher, 85%, other Title I non-public school teachers; *83% class-*

room teachers; 75% principals; . . . ." (Plaintiff's emphasis.)

Page 16 (bottom)-Page 17 (top)

"*Nonpublic School Principal.* Eighty-five percent of the surveyed teachers responding to the questionnaire indicated that the nonpublic school principal provided orientation to school procedures. Sixty-two percent reported the principal arranged scheduling, 18% indicated the principal held monthly conferences and 16% checked that the principal arranged conferences with the regular classroom teachers. Most of the teachers interviewed found the principals to be cooperative and available when necessary. Eighty-three percent of the interviewed teachers reported that the principal encouraged coordination with the regular classroom teacher. Sixty-seven percent indicated that the principal also provided support in the areas of orientation to the school scheduling and pupil related conferences."

Page 31

"The school principal is given a copy of each child's September and May Stanford Achievement Test scores. *The supervisor also indicated that teachers maintain an on-going dialogue with the principal.*" (Plaintiffs' emphasis.)

PLAINTIFFS' EXHIBIT B

EXCERPTS FROM
DEFENDANTS' SUPPLEMENTAL EXHIBIT B

(OEE Evaluation Report on Corrective Reading Services for 1979-1980)

Page 8

"*Criteria for Selection.* Interviewed teachers were asked to identify the criteria used for selecting pupils for the Corrective Reading Program. Ninety-two percent of the teachers indicated the criteria provided by the eligibility list were used for selection. Other responses included: severely disabled readers (83%), *classroom teacher recommendations (50%) and principal recommendations (33%).*

Participants in Selection. Survey respondents indicated that the following people participated in the selection process: Title I teachers (92%), the guidance counselor (44%) and other Title I teachers (29%).

All 12 interviewed teachers said the non-public school Title I guidelines were used in the selection of students. *The teachers reported participants in these decisions included the Title I teacher (reported by 75% of the respondents), the classroom teacher (83%) and the school principal (75%).*" (Plaintiffs' emphasis.)

Page 17

"*Clinical and Guidance.* The survey asked teachers to identify all those who referred pupils to the Clinical and Guidance Services: 96% of the teachers indicated the Title reacher; [sic] 88%, *classroom teachers; 82%*, other Title I teachers; *82%, the principal*; and 15%, parents." (Plaintiffs' emphasis.)

Page 18

"*Nonpublic School Principal.* Eighty-two percent of the survey respondents indicated the school principal provided orientation to the school; 61% reported that the principal arranged scheduling; 24% state the principal arranged monthly conferences and 14% that the principal arranged conferences with the regular classroom teachers."

Page 19

"*Classroom Teacher.* Surveyed teachers indicated the purposes for consultation with the regular classroom teacher as: assessing pupil needs and weaknesses, 85%; selecting pupils, 80%; coordinating scheduling, 72%; and motivating the interest of pupils, 42%.

All interviewed teachers consulted with the regular classroom teacher to assess pupil needs and weaknesses and to coordinate scheduling. Seventy-five percent of the teachers added that they use the consultations *to find out what the classroom teachers are teaching and/or coordinate lessons with the classroom teacher.* Other purposes noted were discussions of pupil behavior and the sharing of test scores." (Plaintiffs' emphasis.)

Page 25

"*Coordination with the Regular Classroom Teacher.* The Title I teacher confers periodically with the nonpublic school classroom teacher to ascertain the specific needs and weaknesses of the assigned pupils. Evaluation of pupils achievement and progress reports are reviewed with *nonpublic* school staff.

Teachers suggested that there should be even more conferences with the regular classroom teachers. It was also suggested that invitations should be ex-

tended to the Title I teachers to attend the nonpublic school faculty meetings." (Plaintiffs' emphasis).

Page 29

"Table 5 lists the observed teacher activities. All of the observed teachers talked with the children about their activities, encouraged and reinforced children in their work and gave feedback to children on their progress. *The evaluator observed that 92% of the teachers helped children solve academic problems and engaged in general discussions with the pupils.*" (Plaintiffs' emphasis.)

Page 35

"Communication between the teachers and the principals is encouraged. The principals must see and sign all the reports to the parents (issued twice a year). They also receive test scores for each group. *In most schools the principals also have informal conferences with the Corrective Reading teachers.*"

PLAINTIFFS' EXHIBIT C

EXCERPTS FROM
DEFENDANTS' SUPPLEMENTAL EXHIBIT C

(OEE Evaluation Report on Reading Skills
Services for 1979-1980

Page 1

"The staff included one full time (FTE)** coordinator, 17 FTE teachers, and one FTE secretary. Each teacher provides a minimum of four hours of instruction per day. *In addition, a one hour conference period was set up each day to be used by teachers to meet with parents, communicate with nonpublic school personnel, and to diagnose individual pupil needs.*" (Plaintiffs' emphasis.)

Page 7

"*Participants in Selection.* All of the surveyed teachers reported that the Title I teacher participated in the selection of the children *for the program. Other responses were nonpublic school principal, 81%; nonpublic school classroom teacher, 63%;* Title I guidance counselor, 50%; and other Title I teachers, 69%." (Plaintiffs' emphasis.)

Page 16

"*Nonpublic School Principal.* Teachers answering the survey indicated they receive support from the nonpublic school principal through orientations to school procedures, 81%; scheduling, 69%; arranging conferences with the regular nonpublic school classroom teachers, 44% and monthly conferences, 19%.

All of the interviewed teachers indicated that the *principal of their school encourages coordination with regular classroom teachers,* provides orientation to school procedures, and makes scheduling de-

cisions. Three interviewed teachers noted that they received support from their principals in the following ways: *the principal's attendance at the monthly conferences*, the principal's respects [sic] for the program, and the principal's assistance in gaining the cooperation of parents, students, and teachers." (Plaintiffs' emphasis.)

Page 19

"*Coordination with Regular Classroom Teacher.* The Title I teacher confers periodically with the nonpublic school classroom teacher to ascertain the specific needs and weaknesses of the assigned pupils. Evaluation of pupil achievement and progress reports are reviewed with *nonpublic* school staff." (Plaintiffs' emphasis.)

PLAINTIFFS' EXHIBIT D

EXCERPTS FROM DEFENDANTS' SUPPLEMENTAL EXHIBIT D

(OEE Evaluation Report on English as a Second Language for 1979-1980)

Page 7

"*Participants in Selection.* All interviewed teachers identified the Title I teacher as a participant in the selection of children for the program. *Eighty-eight percent of the teachers recognized the classroom teacher* and/or Title I guidelines as a determinant in the selection.

Of the 42 respondents to the survey, 98% indicated that the Title I teacher participated in the selection of the children in the program, 9% *named the nonpublic school principal, 100% selected the classroom teacher*, 17% named the guidance counselor and 43% named other Title I teachers." (Plaintiffs' emphasis.)

Page 10

"TABLE I

Percent of Title I ESL Teachers Using Various Assessments At the Beginning of the Year and During the Year

Assessments	Method used at beginning of the year	Method used during year
Title I program assessment	55%	55%
An informal reading test	2%	10%
A standardized norm referenced test	79%	67%
A standardized criterion referenced test	10%	12%
A teacher made criterion referenced test	52%	50%
Conference with classroom teacher	76%	81%
Classroom observation	0%	74%

(Plaintiffs' emphasis.)

Page 11

"*Student Records.* All interviewed teachers kept records of attendance, pre- and posttest standardized scores, individual profile charts, and pupil's work folders.

Most of the teachers kept records of parent conferences (88%), *conferences with nonpublic school staff (88%)*, and referrals to supportive services." (Plaintiffs' emphasis.)

Page 12 (middle)

"*Support Services.* The results of the survey asking teachers to specify all those who refer pupils to Clinical and Guidance Services were: 98%, ESL Title I teacher; 81%, other Title I teachers; *98%, classroom teachers*; *81%, principals*; and 21% parents." (Plaintiffs' emphasis.)"

Page 12 (bottom)

"It was reported by the interviewed teachers that pupils are referred to Clinical and Guidance Services *by the classroom teacher (75%)* or the Title I teacher (63%). *Often the ESL teacher would talk to the regular classroom teacher informally and then decide to jointly request clinical and guidance services.*" (Plaintiffs' emphasis.)

Page 13

"When asked what kind of support they received from the nonpublic school principal, the eight interviewed teachers generally spoke of the principal's cooperation. All of the interviewed teachers indicated that the principal provided orientation to school procedures. Eighty-eight percent of these teachers reported that the school principals encouraged coordination with the regular classroom teachers, initiated or were available for dialogue with the Title I teacher, and took care of scheduling matters." (Plaintiffs' emphasis.)

Page 14

"Interviewed teachers reported that they communicated with parents in a variety of ways: face-to-face (63%); telephone (38%); written communication/written progress reports (100%); parent-tutorial (13%); *and through the classroom teacher (13%)*.

Initiation. Eighty-three percent of the Title I teachers indicated on the survey that they initiated the majority of teacher-parent contacts. *In addition, 5% named the nonpublic school classroom teachers*; 7% indicated the parents; and 2% reported the pupils initiated the majority of parent-teacher contacts." (Plaintiffs' emphasis.)

Page 16 (top)

"*Coordination with Nonpublic School Classroom Teachers.* The Title I teacher confers periodically with the nonpublic school classroom teacher to ascertain the specific needs and weaknesses of the assigned pupils. Evaluation of pupil achievement and progress reports are reviewed with nonpublic school staff."

Page 16 (middle)

"*Coordination with Regular Classroom Teachers.* The coordination with the regular classroom teacher, although informal, was *ongoing* and flexible. One teacher suggested the regular classroom teacher could observe some ESL classes." (Plaintiffs' emphasis.)

Page 21

"*Student Considerations*

Reporting of Student Progress. Student progress is reported to students by immediate feedback and unit-end assessments. Feedback is given to parents

at various times during the year through progress reports (See Appendix), parent meetings, and demonstration lessons. *The principal as well as the classroom teacher gets on-going feedback on the progress of the pupils.*" (Plaintiffs' emphasis.)

Page 23

"*Coordination with Regular Classroom Teachers.* Although there is informal contact, the program coordinator suggested that structures be studied within the constraints of the present regulations to increase the communication between the ESL teacher and the regular classroom teacher."

Page 24

"A recommendation voiced by 26% of the teachers and the program coordinator was that efforts be made, within the program guidelines, to increase communications between the classroom teachers and English as a Second Language. *The evaluation team supports this recommendation.*" (Plaintiffs' emphasis.)

PLAINTIFF'S EXHIBIT E

EXCERPTS FROM
DEFENDANTS' SUPPLEMENTAL EXHIBIT E

(OEE Evaluation Report
on Clinical and Guidance
Services for 1979-1980)

Page 1

"Students entered the Clinical and Guidance Program through referrals by the Title I instructional teacher, *the nonpublic school classroom teacher or the principal.*" (Plaintiffs' emphasis.)

Page 2

"*Nonpublic school classroom teachers* and Title I instructional teachers were invited to case conferences and were involved in formulating treatment plans." (Plaintiffs' emphasis.)

Page 10

"*Activities And Duties*

All of the clinical and guidance personnel were asked to specify their duties and activities. The response of the one school social worker interviewed was: (1) to encourage teachers to respond to the child through individualized approaches; (2) to encourage parents to respond to the child through individualized approaches: (3) to counsel parents, students, *teachers and principals*; (4) to make referrals to other community agencies; (5) visit homes (6) to study the family and life situations of the child to identify problems; (7) to provide individual and group therapy to students; and (8) to counsel the learning disabled child and family." (Plaintiffs' emphasis.)

Page 12

"Response was fairly consistent to the question, "When you are working with pupils to enhance their academic functioning, what adults do you involve in your treatment plan?" *All* clinical and guidance personnel indicated the parents and/or family, the Title I referring teacher *and the regular classroom teacher. Most named the principals* and some interviews also mentioned other clinical and guidance staff and the Title I instructional staff." (Plaintiffs' emphasis.)

Page 13

"*Coordination with Regular Classroom Teachers. Most of the interviewers said they meet with the regular classroom teachers informally,* usually at lunch, since many teachers in the nonpublic schools do not have any free time. In addition, one teacher mentioned the importance of have [sic] definite times scheduled at the beginning of the school year for student appointments in order to facilitate cooperation between the Title I clinical and guidance staff *and the nonpublic school classroom teacher.*

Classroom teachers are invited to all case conference at which time individual student progress is assessed. Classroom teachers are also involved in formulating comprehensive treatment plans." (Plaintiffs' emphasis.)

Page 15 (top)

"*How Students were Referred. Students were referred to clinical and guidance services by the Title I instructional teacher, the regular classroom teacher and/or the nonpublic school principal.*" (Plaintiffs' emphasis.)

Page 15 (bottom)

"*How Students Were Reassessed.* The child's progress was discussed with the Title I instructional teacher *and regular classroom teacher*; recommendations for different approaches were made if the child was not improving. This reassessment was done *on a regular basis.*" (Plaintiffs' emphasis.)

Page 16

"*Staff Considerations.*

"*Staff Involvement with the Title I Teacher and the Regular Classroom Teacher. A team approach was used.* Clinical and guidance staff met with Title I teachers *and the regular classroom teachers* to discuss individual cases." (Plaintiffs' emphasis.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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76 Civ. 888 (CHT)

NATIONAL COALITION FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY, ET AL., PLAINTIFFS

v.

JOSEPH A. CALIFANO, Secretary of the United States Department of Health, Education, and Welfare, ET AL., DEFENDANTS

and

JAMES and BESSIE BOVIS, ET AL., INTERVENOR-DEFENDANTS

and

PHILIP and IDA FENSTER, ET AL., INTERVENOR-DEFENDANTS

AFFIDAVIT OF REVEREND MONSIGNOR JOHN J. HEALY

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

REVEREND MONSIGNOR JOHN J. HEALY, being duly sworn, deposes and says:

1. I am the Secretary of Education and Director of the Department of Education of the Roman Catholic Archdiocese of New York. My administrative responsibilities include overseeing the education of 140,630 stu-

dents in the Catholic elementary and secondary schools in the Counties of Richmond, New York, Bronx, Westchester, Putnam, Dutchess, Rockland, Orange, Ulster and Sullivan.

2. I make this affidavit on behalf of the several defendants in this matter, with the understanding that it will be submitted to the Court as part of the joint exhibits to be filed by the several defendants.

3. I have been Secretary of Education of the Archdiocese of New York since August 1, 1978. From January 1, 1976, to July 31, 1978, I served as Deputy Secretary of Education. Prior to 1976, I served as Associate Secretary of Education.

4. In my position as Secretary of Education of the Archdiocese of New York, I have become familiar with the operation of the Catholic elementary and secondary schools within the Archdiocese. There are 287 Catholic elementary schools and 69 Catholic secondary schools in the ten counties that constitute the New York Archdiocese. Of that total number of schools, 159 Catholic elementary schools and 48 Catholic secondary schools are located in the Counties of New York, Bronx and Richmond, counties within the Archdiocese for which the New York City Board of Education has responsibility for the operation of the public school system. Approximately 95,698 students are enrolled in the Catholic elementary and secondary schools in those three counties.

5. In my position as Secretary of Education of the Archdiocese of New York, I have become familiar with the programs of remedial education made available through the New York City Board of Education to economically and educationally disadvantaged children who attend nonpublic schools in New York City under Title I of the Elementary and Secondary Education Act of 1965 (Pub. L. No. 89-10) (hereinafter "Title I"). According to information compiled by the New York City Board of Education for the 1977-1978 school year, 15,109 students attending 97 Catholic elementary and secondary schools in Manhattan, the Bronx and Staten Island were eligible,

on the basis of economic and educational deprivation, to receive Title I services during that school year. Of the eligible Title I students in those schools, 7,781 actually received Title I remedial services.

6. Prior to the commencement of Title I remedial services for nonpublic school students in New York City in 1966, the Catholic elementary and secondary schools in the Archdiocese of New York did not have the financial resources to provide to economically and educationally disadvantaged students any of the types of remedial educational services presently available under Title I. If, for any reason, those Title I remedial educational services were no longer available to qualified students in the Catholic elementary and secondary schools in the Archdiocese of New York, the schools themselves would not have the economic resources to provide the services on their own.

7. I have reviewed several decisions of the United States Supreme Court deciding the constitutionality of public aid programs benefiting church-related elementary and secondary schools and the descriptions of those schools contained in those opinions. In particular, I have examined the decisions in *Committee for Public Education* v. *Nyquist*, 413 U.S. 756 (1973), and *Levitt* v. *Committee for Public Education*, 413 U.S. 472 (1973), which invalidated programs of aid to church-related schools and their students enacted by the New York Legislature. Each of those decisions contained what the Court identified as a "profile" of church-related elementary and secondary schools in New York State. Based on my review of those decisions and my knowledge of the Catholic elementary and secondary schools in the Archdiocese of New York, I can state that the "profile" of the church-related elementary and secondary schools recited in those opinions does not accurately describe the Catholic elementary and secondary schools under my supervision which have Title I programs under the auspices of the New York City Board of Education.

General Observations

8. Before addressing the specific elements of the "profile" contained in the *Nyquist* and *Levitt* decisions, a few general observations about the Catholic elementary and secondary schools under my supervision are appropriate. The focus of the general and specific observations which follow is on those Catholic elementary and secondary schools which have Title I programs. Because those schools are located in the inner city and have significant non-Catholic student populations, they have characteristics that defy stereotyping.

9. The underlying objective of the Catholic elementary and secondary schools under my supervision is to provide a sound education to their students so that those students can become responsible, productive and moral citizens. While the public schools have a comparable central objective, our schools are distinctive from the public schools in that we add to an otherwise complete education instruction in religion, and that we consciously and explicitly address questions of morals and values when those questions are relevant to the subject matter being taught.

10. A concern for religion and religious values has always been central to the Catholic philosophy of education. However, Catholic educators are aware that such a concern is not theirs exclusively. Much of what is taught to students in the elementary and secondary grades, wherever they attend school, is value-laden, and no conscientious teacher can ignore the value implications of what might otherwise be considered a secular subject matter. For example, any treatment in a social science class of the civil rights movement of the past 20 years involves the teacher in forming a value judgment on the dignity of individual persons. The "religious" values that are addressed in Catholic elementary and secondary schools, and particularly those with a significant non-Catholic student population, are not narrowly parochial or sectarian in nature, but rather more

broadly Christian in recognition of the Judeo-Christian heritage of this nation. Our schools also constantly stress moral, as distinct from precisely religious, values. These include responsibility, tolerance, brotherhood, thoughtfulness and studiousness.

11. The concern for religion and religious values which is central to the philosophy of Catholic schools in no way dilutes or distorts the content of what would be considered secular, as opposed to religious education, courses. Indeed, a document issued in 1977 by the Vatican's Sacred Congregation for Catholic Education admonished Catholic educators as follows:

> "Individual subjects must be taught according to their own particular methods. It would be wrong to consider subjects as mere adjuncts to faith or as a useful means of teaching apologetics. They enable the pupil to assimilate skills, knowledge, intellectual methods and moral and social attitudes, all of which help to develop his personality and lead him to take his place as an active member of the community of man." *The Catholic School*, § 39 (a document issued by the Sacred Congregation for Catholic Education, March 19, 1977).

The Catholic schools under my supervision have consistently adhered to that proposition—namely, that secular subject matter has its own integrity and must be taught without distortion or intrusion of religious concerns not relevant to the subject matter.

12. There are two fundamental reasons why Catholic elementary and secondary schools under my supervision offer a separable secular education, along with the religious instruction that is provided.

> a. We are obligated under the provisions of the New York State Education Law to offer a curriculum which offers at least the following courses: mathematics, reading, writing, English language, geography, U.S. history, civics, health education,

physical education, New York State history, science and safety education. We are also obligated to provide our students in those courses with a body of knowledge comparable to that provided the students in the public schools in the state so that our students can perform satisfactorily on standardized tests provided by state officials to both public and nonpublic school students.

b. Even in the absence of those obligations imposed by state law, however, our schools would still provide a curriculum of the type described above. The obligations of our schools extend far beyond the religious needs of our students—they extend to their temporal requirements. We would be failing in our obligations as educators and would have no right to sponsor schools if we did not provide our students with that education which is necessary for them to be responsible and productive citizens.

That Catholic schools teach secular subjects both objectively well is attested by the readiness of public and private high schools, colleges and universities to admit graduates of those schools.

13. Against this background of the general educational philosophy of the Catholic elementary and secondary schools under my supervision, it is appropriate to address the specific characteristics of the "profile" of those schools which the Supreme Court used to decide the *Nyquist* and *Levitt* cases.

Religious Mission

14. One of those characteristics is that the schools that the Court was examining were "an integral part of the religious mission of the church sponsoring it." While the words quoted are, standing alone, unobjectionable as a description of the motivation of many persons who sponsor our schools, they are misleading in the inferences that the Supreme Court drew from them as a character-

istic of the educational process of Catholic elementary and secondary schools. They are especially misleading for the Catholic schools that have Title I programs provided by the New York City Board of Education.

15. It cannot be denied that any enterprise undertaken by the Roman Catholic Church is religiously motivated. Thus, the operation of elementary and secondary schools by parishes and a diocese is consistent with that generosity which is central to the mission of the Roman Catholic Church and mandated by its Founder. But so is the care of the hungry or the ill-housed, and motivation in no way clouds or dilutes such assistance. The difficulty lies in defining the precise nature of that religious mission relative to educating children in need of remedial instruction.

16. In this regard, a central fact about Catholic elementary and secondary schools is that they are community-based—that is, the overwhelming number of those schools are sponsored by a parish which is located in a particular community and which draws its students from that community. Those schools of necessity, therefore, reflect the ethnic, cultural, economic and religious profile of their communities. These factors can, do and should affect the educational philosophy and practice of each school. And, while general policies and goals are set forth at the diocesan level covering such diverse matters as health and safety regulations and curriculum content, how those policies and goals will be implemented by each school depends on the needs and the skills of its population. Indeed, in many of the schools in the Archdiocese, those policies and goals are implemented by parish school boards that are composed of the parents of students, who in Title I schools include a number of non-Catholics.

17. The eligibility requirements for student participation in Title I remedial programs are such that those programs will be found only in those Catholic elementary and secondary schools that are in that portion of the metropolitan area which we have come to call the "inner

city." That fact, which is essential to understanding the work of Title I Catholic elementary and secondary schools, necessarily defines the educational mission of the schools which is in no way compromised by the religious motivation that is the foundation of the desire to serve the ill-educated, as much as it is to serve the ill-fed.

18. Because they are located in inner-city communities, the Title I schools in Manhattan, the Bronx and Staten Island draw their students from highly concentrated minority populations. When those schools are located in certain areas in the inner city, the population from which the students are drawn is overwhelmingly Black and contains a large number of non-Catholics. The majority of the students attending several Catholic elementary schools in areas with large Black populations are not of the Roman Catholic faith.

19. Moreover, while the responsibility for financing the operation of elementary schools rests with the parish or parishes sponsoring those schools, the Archdiocese has found it necessary over the past seven years to provide a subsidy to inner-city schools with significant non-Catholic student bodies to keep them in operation. The Archdiocesan Commission for Inter-Parish Financing has distributed approximately $2.5 million each year, principally to parishes which operate schools with Title I programs. Ninety percent of the money has been used to defray deficits incurred by the Title I schools. In the 41 elementary schools receiving funds from the Commission for Inter-Parish Financing, there are 16,245 students, of which 2,623, or approximately 16 percent, are non-Catholic. In addition, the Archdiocese has an Inner City Scholarship Fund which has awarded scholarships exclusively to students at 56 inner-city schools with Title I programs in Manhattan and the Bronx. During the 1978-1979 academic year, some $300,000 was provided by that Fund for tuition subsidies for students in those Title I schools.

20. In light of the fact that there are substantial diocesan subsidies to inner-city Title I schools with significant non-Catholic student bodies, a question arises as to what "religious" mission the Archdiocese is fulfilling in maintaining such schools. The answer is clear to those who understand the deep concern that the Catholic Church, in general, and Catholic educators, specifically, have for those people who are victims of economic deprivation, whether they are Catholic or not. The mission is one of social and community action, which is reflected in the willingness of the Catholic Church to divert its resources from strictly religious activities to aid those who are the victims of social, economic and cultural disadvantage or racial discrimination. A long-standing mission of the Roman Catholic Church has been to alleviate the effects of social injustice, and that mission is fulfilled in part by the continued operation of inner-city Title I schools for the benefit of the community, irrespective of whether those schools serve a predominantly Catholic population.

Obedience to Doctrines and Dogmas

21. Another of the characteristics of the "profile" of Catholic elementary and secondary schools contained in the *Nyquist* and *Levitt* decisions is that they "require obedience by students to the doctrines and dogmas" of the Catholic faith. I can state unequivocally that no Catholic school under my supervision has any such purpose or serves any such function.

22. While the religious education provided by Catholic elementary and secondary schools reflects a concern that students receive, in their normal educational setting, an exposure to the teachings of the Roman Catholic Church and Christianity in general, it is not the function of a school to compel its students to believe anything, religious or otherwise. The purpose of a school is strictly to provide its students with the information and means

of analysis so that they can come to a better understanding of the subject matter, whether that subject matter is religious or secular in nature. Our schools would be untrue to their functions as educational institutions if they sought to compel students to accept one religious viewpoint or another, just as they would be shirking their responsibility if they compelled the students to accept one interpretation of Shakespeare rather than another or one explanation for the American Civil War rather than another.

23. Our schools would not only diminish their standing as quality educational institutions if they sought to compel obedience of students to the doctrines and dogmas of the Roman Catholic Church. They would also be acting contrary to the very doctrines of that Church. A central principle of Roman Catholic theology is that religious faith must be freely given and freely accepted. Under that precept, nothing may be done by the Church, or anyone acting on its behalf, that would seek to coerce the conscience. Thus, those responsible for the operation of Catholic elementary and secondary schools would be untrue to their own beliefs if they sought to compel the students to obey the doctrines and dogmas of the Church.

Inculcation of Religious Values

24. A third characteristic of the "profile" schools in the *Nyquist* and *Levitt* decisions was that they had "as a substantial purpose the inculcation of religious values." That characteristic is neither a purpose nor a function of the Catholic elementary and secondary schools under my supervision.

25. The word "inculcate" has connotations which are inconsistent with the educational process. It suggests both in its connotations and literal definition an effort to induce students to accept ideas or values through coercion. Our schools do not engage in that activity, whether religious values or other aspects of learning are involved.

26. By denying that our schools "inculcate" religious values, I do not mean to suggest that exposure of students to religious values is in any way foreign to our schools or our educational program. Our schools have as a central concern that students be aware of Catholic values and examine those values critically. That concern is expressed not only in our religious education classes, but also in our practice of examining the relationship of religious or moral values to the entire learning process where such values are relevant to the subject matter. But we do not seek to force our students to adopt religious values that they cannot or do not freely accept.

Admission Requirements

27. A further characteristic of the "profile" schools in the *Nyquist* and *Levitt* decisions is that they "impose religious restrictions on admissions." The Title I Catholic elementary and secondary schools under my supervision do not operate under any such restrictive admissions policy.

28. Because most of the schools under my supervision are supported by the revenues of the parishes which sponsor them, preference in admissions is given to children of those persons who provide revenue to the parish —namely, parishioners who contribute regularly to the parish. Because of that policy, first preference for available places in the schools under my supervision would be given to the children of those Catholic parents.

29. However, once the needs of the children of parishioners are met, remaining spaces at the school are open without consideration to the religious affiliation of the student or of his parents. Indeed, the prevailing policy is to give preference, after the needs of children of parishioners are met, to others living within or close to the geographical boundaries of the parish. By definition, the second level of preference is for students who are not of the Catholic faith.

30. That these policies do not restrict admissions on religious grounds is most dramatically illustrated by the Title I Catholic elementary and secondary schools under my supervision. Of the approximately 34,000 students enrolled in the 79 Catholic elementary and secondary schools in Manhattan, the Bronx and Staten Island which have Title programs on their premises, approximately 14.7 percent are of a religious faith other than Catholic. The percentage of non-Catholic students in the Title I schools is even higher in those areas with predominantly Black and Asiatic populations. For example, several Title I schools serving those communities have student populations that are more than 60 percent non-Catholic.

31. The predominance of Catholic students in the enrollment statistics is a natural consequence of our desire to see that children of those who support the parish, which supports the school, should in equity have free access to those schools. However, those schools remain community-based and welcome all members of the community to the school when the needs of parishioners have been satisfied. Whenever the community in which the school is located has a significant non-Catholic population, the consequence of our admissions policy is to invite significant numbers of non-Catholics to be educated in our schools.

Faculty Hiring Policies

32. Another aspect of the "profile" schools described in the *Nyquist* and *Levitt* decisions is that they impose "religious restrictions on faculty appointments." To my knowledge, teaching positions in the Catholic elementary and secondary schools under my supervision are not restricted to Roman Catholics. Hiring is a responsibility of the individual schools; the Archdiocesan office serves simply as a clearinghouse for applicants who are seeking teaching positions in the Catholic elementary and secondary schools. The Archdiocesan school office retains a file of applications, and the names of qualified applicants

are made available to individual schools as teaching positions become available.

33. The teacher application form currently used by the Archdiocese requests information concerning the religious affiliation of the applicant. No application is rejected and no applicant is denied referral to a school because he or she is of a religious faith other than Roman Catholic.

34. Individual schools have broad latitude in deciding whether or not to hire an applicant referred to them by the Archdiocesan school office. Under Archdiocesan policies, no applicant is referred who does not have sound academic qualifications, a matter of primary consideration. As a matter of Archdiocesan policy and practice by individual schools, no person will be hired for a teaching position if he or she is openly hostile to the Roman Catholic Church or its belief system. Barring such aggravated sentiments, non-Catholic applicants experience no discrimination in the hiring process. In the employment interview, all applicants are made aware of and asked if their consciences would allow them to cooperate with the policies of the school, the religious education program, value education and the general Catholic atmosphere of respect for each other, for learning and for God.

35. I am aware that there are teachers employed by Catholic elementary and secondary schools under my supervision who are not Roman Catholics. This is particularly true in schools with significant numbers of Black students, where role models are important and where there are very few Black Catholics with the requisite academic qualifications to draw from. The precise number of non-Catholics teaching in Archdiocesan schools is difficult to determine because the school census cards received by my office do not classify teachers by religious affiliation. However, an inquiry of a random sample of Title I schools revealed that 15 non-Catholics were teaching in the schools contacted, and I am aware that is not the total number of non-Catholic teachers in our system.

For example, I know that 20 of a total of 359 lay teachers employed by Archdiocesan high schools are not Catholic. Unlike parish elementary schools, the direct administration of those high schools is a function of the Archdiocesan office. These statistics amply demonstrate that the schools of the Archdiocese do not restrict the hiring of teachers on religious grounds.

Religious Restrictions on Course Content

36. Another feature of the "profile" schools in the *Nyquist* and *Levitt* decisions is that they "impose religious restrictions on what or how the faculty may teach." That characteristic does not accurately describe the Catholic elementary and secondary schools under my supervision.

37. The emphasis in the religious education classes in the overwhelming majority of the schools under my supervision is on the teachings of Christianity as the Roman Catholic Church formulates them. Those responsible for teaching the religious education classes must have a thorough understanding of the teachings of the Roman Catholic Church and are required to teach them accurately, not presenting anything as Catholic doctrine which is not factually so. This restriction, however, does permit and indeed encourages those responsible for religious education to explain the positions taken by other Christian denominations or other religious faiths on particular issues that are within the purview of the religious education curriculum.

38. There are no religious restrictions on the secular content of the secular subjects offered in the Catholic elementary and secondary schools under my supervision. The secular content of those secular courses has its own academic integrity, and it would be a gross distortion of the educational process to restrict the secular content of those courses because of the religious beliefs of the Roman Catholic Church.

39. It is true, of course, that in the educational process there is not always a sharp line dividing the secular

from the religious. In history, for example, a large part of the story of the development of Western civilization is the story of the impact of Christianity on Western civilization. Of necessity, the course in Western Civilization will touch upon the conflicts that divided the Christian Church into various denominations and sects. If the historian's objective account of the precise points of conflicting theological dogma is inconsistent with the Roman Catholic theologian's account, the reconciliation, if there is to be one, should be made by the theologian and not the teacher of history. However, the teacher who must include an historical account of the Reformation in a class in one of the schools under my supervision would be expected to give the account that is most consistent with the best available historical materials and not necessarily the account that is consistent with a Roman Catholic theologian's view of the Reformation.

40. Some of the secular subjects taught in the schools under my supervision also touch questions of morals and values. Teachers are not restricted on how they approach such subject matter, but are encouraged to expose students to the moral and value dimension of the subject matter within a Christian framework and not to shun those issues.

Attendance at Religious Instruction

41. An additional feature of the "profile" schools in the *Nyquist* and *Levitt* decisions is that they "require pupils to attend instruction in the theology or doctrine of a particular faith." It is true that all students enrolled in the schools of the Archdiocese take a course in religion as a part of the curriculum. However, to the extent that this characteristic of the "profile" implies that the content of the religious instruction offered is narrowly sectarian in content or is taught to compel adherence by students to particular religious beliefs, it does not accurately portray the schools under my supervision.

42. As previously explained in this affidavit, courses in religious education are a regular part of the curriculum of the schools under my supervision and the emphasis in those courses is on the teachings of Christianity as the Roman Catholic Church formulates them. Parents of children who are not members of the Roman Catholic faith are informed of these features of the curriculum prior to enrollment.

43. The religious instruction offered in the schools under my supervision is not limited to the specific doctrines and dogmas of the Roman Catholic Church, although religious teachings and beliefs that are peculiar to the Roman Catholic Church are explained to the students. However, the Roman Catholic Church is part of a much broader Christian community, and the religious instruction in the Archdiocesan schools includes much of what the Roman Catholic Church shares with other Christian denominations. In addition, religious teachings of other denominations that conflict with Roman Catholic teachings are explained to students so that they will have a better understanding of the nature of religious belief.

44. Moreover, a central goal of the religious instruction program is to show students the importance and value of services to others. Thus, as an extension of the religious instruction program, students are encouraged to participate in tutoring younger students, visiting elderly persons who are shut-in or hospitalized, and activities such as Red Cross Walk-a-Thons and the Cerebral Palsy reading program.

45. No effort is made in the religious education courses offered by the schools under my supervision to compel any student, whether Catholic or of some other religious faith, to accept as valid or to adhere to the beliefs of the Roman Catholic Church. Those beliefs are explained and explored in the religious education classes in the same manner that other subject matter taught in those schools is explained and explored, and students are

free to accept or reject those beliefs according to their own consciences.

46. Parents of children who subscribe to a religious faith other than the Roman Catholic faith enroll their children in the schools under my supervision for a variety of reasons. One of their motivations is that they themselves are strongly religious people—whether they be Baptists or Muslims or Buddhists—and they wish their children to be exposed to religious values. They enroll their children in Catholic elementary and secondary schools at considerable expense to themselves, and their primary objective is to obtain a sound education for their children and not because they want their children exposed to any proselytizing efforts by the schools. In confirmation of this fact, to my knowledge there has never been an instance of a non-Catholic student removed from a Catholic elementary or secondary school because the student was forced to believe or engage in a religious practice in violation of that student's own conscience or belief system.

Attendance at Religious Activities

47. A final characteristic of the "profile" schools in the *Nyquist* and *Levitt* decisions is that they "require attendance of pupils at religious activities." The Catholic elementary and secondary schools under my supervision engage in that practice. However, non-Catholic students are not permitted to participate in some religious activities, such as reception of the Sacraments.

48. Most of the Catholic elementary and secondary schools under my supervision have some form of religious observance as part of the school day. Most typically, that religious observance will be in the form of a prayer recited at the beginning or the end of the school day, or before instruction begins in a particular class. In addition, during regular school hours on an occasional basis most schools will schedule more formal liturgical observances, such as attendance at Mass by a class or the

entire school. All students enrolled in the schools are expected to be present for such religious observances, but the degree or extent to which they participate in those observances is a matter of conscience for the individual student, and that freedom of conscience is scrupulously observed by teachers.

49. The parents of students who subscribe to a religious faith other than the Roman Catholic faith are told prior to registration that their children will be expected to be present for the types of religious observances that I have described. To my knowledge, no parent of a student who is of a religious faith other than the Roman Catholic faith has complained that the student's participation in those religious observances has in any way compromised the student's own religious beliefs or practices.

Conclusion

50. I have attempted in this affidavit to describe accurately the policies and practices of the Catholic elementary and secondary schools under my supervision as they relate to the various characteristics of the "profile" schools that the Supreme Court described in the *Nyquist* and *Levitt* decisions. As the information I have supplied should make clear, the schools under my supervision depart significantly from the schools of the "profile." That is particularly true of those schools which have Title I programs under the auspices of the New York City Board of Education—schools which have a significant number of non-Catholic students.

51. By distinguishing those schools from the characteristics of the "profile" schools, I do not intend to deny that those schools serve religious functions or have religious objectives. However, where the "profile" attempts to portray such schools as having a singular and overriding objective of indoctrinating students in the Roman Catholic faith or compelling them to subscribe to the beliefs of the Roman Catholic Church, the "profile" distorts

and misstates the total educational mission of those schools.

52. The basic objective of the Catholic elementary and secondary schools under my supervision, including those with Title I programs, is to provide their students with a sound education in an environment in which the students are exposed to religious education and religious values. Our goal is to produce students who have the knowledge and intellectual skills to be responsible and productive members of their communities and who are also aware of the religious heritage of our society.

/s/ John J. Healy
REVEREND MONSIGNOR JOHN J. HEALY

Subscribed and sworn to before me
this 22 day of March, 1979.

/s/ Josephine Raymond
JOSEPHINE RAYMOND

Notary Public, State of New York
No. 31-8505425
Qualified in New York County
Commission Expires March 30, 1980

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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76 Civ. 888 (CHT)

NATIONAL COALITION FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY, ET AL., PLAINTIFFS

v.

JOSEPH A. CALIFANO, Secretary of the United States Department of Health, Education and Welfare, ET AL., DEFENDANTS

and

JAMES and BESSIE BOVIS, ET AL., INTERVENOR-DEFENDANTS

and

PHILIP and IDA FENSTER, ET AL., INTERVENOR-DEFENDANTS

AFFIDAVIT OF REVEREND VINCENT D. BREEN

STATE OF NEW YORK)
) ss:
COUNTY OF KINGS)

REVEREND VINCENT D. BREEN, being duly sworn, deposes and says:

1. I am the Superintendent of Education of the Roman Catholic Diocese of Brooklyn. My administrative responsibilities include overall supervision of the education of approximately 125,000 students in the elementary and secondary parochial schools in the Counties of Queens and Kings.

2. I make this affidavit on behalf of the several defendants in this matter, with the understanding that it will be submitted to the Court as part of the joint exhibits to be filed by the several defendants.

3. I have been Superintendent of Education for the Diocese of Brooklyn since June 1978. For two years prior to my appointment as Superintendent of Education, my title was Superintendent of Schools for the Diocese. Prior to that time, I served as Associate Superintendent of Schools from September 1, 1973, to June 30, 1976, and as Assistant Superintendent of Schools from October 1, 1966, to August 31, 1973.

4. In my position as Superintendent of Education for the Diocese of Brooklyn, I have become familiar with the operation of the Catholic elementary and secondary schools within the Diocese. There are 178 Catholic elementary schools and 24 Catholic secondary schools in the two counties that constitute the Diocese. The public schools in those two counties are under the jurisdiction of the New York City Board of Education.

5. In my position as Superintendent of Education for the Diocese of Brooklyn, I have become familiar with the program of remedial education made available through the New York City Board of Education to economically and educationally disadvantaged children who attend nonpublic schools in Kings and Queens Counties under Title I of the Elementary and Secondary Education Act of 1965 (Pub. L. No. 89-10) (hereinafter "Title I"). According to information supplied by the New York Board of Education, 12,913 students in 79 Catholic elementary and secondary schools in Kings and Queens Counties were eligible during the 1977-1978 school year, on the basis of economic and educational deprivation, to receive Title I services. Of the total eligible students, 7,726 actually received Title I remedial educational services during that school year.

6. Prior to the commencement of Title I remedial services for nonpublic school students in New York City in 1966, the the Catholic elementary and secondary schools in the Diocese of Brooklyn did not have the financial resources to provide to economically and educationally disadvantaged students any of the types of remedial educational services presently available under Title I. If, for

any reason, those Title I remedial educational services were no longer available to qualified students in the Catholic elementary and secondary schools in the Diocese of Brooklyn, the schools themselves would not have the economic resources to provide the services on their own.

7. I have reviewed several decisions of the United States Supreme Court deciding the constitutionality of public aid programs benefiting church-related elementary and secondary schools and the descriptions of those schools contained in those opinions. In particular, I have examined the decisions in *Committee for Public Education* v. *Nyquist*, 413 U.S. 756 (1973), and *Levitt* v. *Committee for Public Education*, 413 U.S. 472 (1973), which invalidated programs of aid to church-related schools and their students enacted by the New York Legislature. Each of those decisions contained what the Court identified as a "profile" of church-related elementary and secondary schools in New York State. Based on my review of those decisions and my knowledge of the Catholic elementary and secondary schools in the Diocese of Brooklyn, I can state that the "profile" of the church-related elementary and secondary schools recited in those opinions does not accurately describe the Catholic elementary and secondary schools under my supervision which have Title I programs under the auspices of the New York City Board of Education.

General Observations

8. The Catholic elementary and secondary schools under my jurisdiction seek to provide, above all, a sound education to their students so that those students can become useful, productive and concerned citizens. While the public schools have a comparable central objective, our schools are distinctive from the public schools in that we insist that instruction in religion be a part of the regular school day and that we consciously and explicitly address questions of morals and values when those questions are relevant to the subject matter being taught.

9. A concern for religion and religious values has always been central to the Catholic philosophy of education. However, Catholic educators recognize that such a concern is not their exclusive province. Much of what is taught to students in the elementary and secondary grades, wherever they attend school, is value-laden, and no conscientious teacher should ignore the value implications of secular subject matter. So, in social studies programs in the public schools in New York City the question of the horrors of the Holocaust is considered and involves both teachers and students in coming to a value judgment about the Nazi treatment of the Jews during World War II. When the question of slavery is taught in history classes concerned with the Civil War, students must also examine similar value questions about the treatment of Blacks in their own country. While religious instruction is given in all Catholic elementary and secondary schools which emphasizes the teachings of Roman Catholicism, the religious and moral values that are addressed in other subjects, particularly in those schools with a significant non-Catholic student population, are not simply Catholic but include more broadly Christian values in recognition of the Judeo-Christian heritage of this nation.

10. The concern for religion and religious values which is central to the philosophy of Catholic schools does not, however, dilute or distort the content of what would be considered secular, as opposed to religious, education courses. Indeed, a document issued in 1977 by the Vatican's Sacred Congregation for Catholic Education admonished Catholic educators as follows:

> "Individual subjects must be taught according to their own particular methods. It would be wrong to consider subjects as mere adjuncts to faith or as a useful means of teaching apologetics. They enable the pupil to assimilate skills, knowledge, intellectual methods and moral and social attitudes, all of which

help to develop his personality and lead him to take his place as an active member of the community of man." *The Catholic School*, § 39 (a document issued by the Sacred Congregation for Catholic Education, March 19, 1977).

The Catholic schools under my supervision have consistently adhered to that proposition—namely, that secular subject matter has its own integrity and must be taught without distortion or intrusion of religious concerns not relevant to the subject matter.

11. There are two fundamental reasons why Catholic elementary and secondary schools under my supervision offer a separable secular education, along with the religious instruction that is provided.

a. We are obligated under the provisions of the New York State Education Law to offer a curriculum which includes at least the following courses: mathematics, reading, writing, English language, geography, United States history, civics, health education, physical education, New York State history, science and safety education. We are also obligated to provide our students in those courses with a body of knowledge comparable to that provided the students in the public schools in the state so that our students, when they leave school, are prepared to enter into the society with skills and knowledge comparable with other members of society.

b. Even in the absence of those obligations imposed by state law, however, our schools would still provide a curriculum of the type described. We would be failing in our obligation as educators if we did not provide our students with the education necessary for them to be responsible and useful citizens.

12. Against this background of the general educational philosophy of the Catholic elementary and secondary schools under my supervision, it is appropriate to address more specifically the nature of our Catholic

schools, particularly Catholic schools whose students participate in the Title I program.

The Mission of Catholic Schools

13. It cannot be denied that any enterprise undertaken by the Roman Catholic Church is religiously motivated. Thus, the operation of elementary and secondary schools by parishes is consistent with the religious mission of the Roman Catholic Church. However, that religious mission of the Roman Catholic Church is very broad in its scope. Our schools are aware that Jesus told his followers to teach all nations. Our schools have interpreted that command to mean that education—both religious and secular—is important to mankind, and they are seeking to fulfill that need. However, we also know that Jesus told us to "feed the hungry, give drink to the thirsty, clothe the naked." Thus the Roman Catholic Church offers services to those who are afflicted, assists those who are in need and comforts those who are unhappy, whatever their race or creed. The religious mission of the Catholic Church, therefore, includes both educational and social concerns.

14. The essential fact about Catholic elementary and secondary schools is that they are community-based—that is, the overwhelming number of those schools are sponsored by a parish which is located in a particular community with geographical boundaries and which draws its students from the members of the community residing within those geographical boundaries. Those schools of necessity, therefore, reflect the ethnic, cultural, economic and religious profile of the community in which they exist. These factors can and do affect the educational philosophy and practice of each school. And, while general policies and goals are set forth at the Diocesan level, covering such diverse matters as health and safety regulations and curriculum content, how those policies and goals will be implemented by each school depends on the needs and skills of its population. The religious mis-

sion of each Catholic parish is to meet the needs of its parishioners—both educational and social—as they are reflected in the needs and circumstances of the local population.

15. The eligibility requirements for student participation in Title I remedial education programs are such that those programs will be found only in those Catholic elementary and secondary schools that are in that portion of the metropolitan area which we have come to call the "inner city." To understand the mission of Catholic elementary and secondary schools whose students receive Title I services, it is essential to define the community that is being served and the mission which those parishes fulfill in operating schools in those communities.

16. Because they are located in inner-city communities, the Title I schools in Kings and Queens draw their students from a highly concentrated minority population. When those schools are located in such areas as Bedford-Stuyvesant, the population from which the students are drawn is overwhelmingly Black. It is a fact that a small minority of the American Black community is Roman Catholic. Consequently, Catholics constitute a minority of the total population of Bedford-Stuyvesant. Nevertheless, Catholic parishes in Bedford-Stuyvesant continue to operate elementary schools and, as a consequence, now serve a student population that is approximately 40 percent non-Catholic.

17. While the responsibility for financing the operation of elementary schools rests with the parish or parishes sponsoring those schools, the Diocese of Brooklyn has found it necessary over the past 13 years to provide an additional Diocesan subsidy to inner-city schools with significant non-Catholic student bodies to keep them in operation. This subsidy is necessary because the parishes do not have sufficient funds to provide a full subsidy for the operation of their schools. Over the past 13 years, the Diocese of Brooklyn has contributed, in addition to the subsidies of each individual parish, a

Diocesan subsidy amounting to almost $11 million. Virtually all of the money has been used to defray deficits incurred by schools with Title I programs. In Bedford-Stuyvesant alone, where a significant number of non-Catholic youngsters are attending our schools, the Diocesan contribution to the operation of those schools has been over $2 million.

18. It is evident that the religious mission which both parishes and the Diocese are fulfilling in the operation of these schools and for which the Diocese and parishes are expending such large sums of money relates to the educational, as well as the social, mission of the Catholic Church. Those parishes, with the support of the Diocese, have chosen to offer to the students of the inner city a value-laden educational program of high quality. The services are offered despite the fact that the number of Catholic students is not sufficient to fill these schools. Thus, the religious mission of the parishes in sponsoring those schools is a reflection of the educational and social needs of those communities and the educational and social concerns of the Roman Catholic Church.

19. One of the characteristics of the "profile" of the parochial schools discussed by the Supreme Court in its decisions in *Committee for Public Education* v. *Nyquist*, *supra*, and *Levitt* v. *Committee for Public Education*, *supra*, is that those schools were "an integral part of the religious mission of the church sponsoring" them. If that element of the "profile" was intended to address the motivation of the Diocese of Brooklyn in maintaining schools with Title I programs that serve a significant non-Catholic student population, I have no quarrel with applying that description to the schools under my supervision with Title I programs. However, if that element of the "profile" is meant to suggest that those schools exist solely for narrow parochial or sectarian purposes, I would take issue with such a characterization of the schools under my supervision which have Title I programs on their premises. As I have just explained, the

mission of the parishes sponsoring community-oriented schools with Title I programs is as much educational and social as it is religious.

Admissions Practices

20. Since meeting the needs of the communities in which they are located is an important element in the operation of our Catholic inner-city elementary schools and secondary schools, the admissions policies for these schools reflects that factor.

21. Because all of the schools under my supervision are supported, at least in part, by revenues of the parishes which sponsor them, preference in admission is given to children of those persons who provide the revenue to the parish—namely, parishoners who contribute regularly to the parish. Because of that policy, first preference for available places in the schools under my supervision would be given to the children or parishoners.

22. However, once the needs of children of parishoners are met, remaining spaces at the school are open without consideration to the religious affiliation of the student or of his parents. Thus, the remaining seats are available to members of the community and reflect, therefore, the ethnic, cultural, economic and religious profile of that community.

23. The information regularly supplied to my office by individual schools does not show the religious composition of their student bodies. However, a special survey conducted at the request of counsel and completed in June 1976 collected such data for the 75 elementary and secondary schools in the Brooklyn Diocese that had Title I programs on their premises. I have no reason to believe that the figures revealed by the survey have changed significantly since the survey was conducted. The survey showed that the 75 schools had a total student population of 39,194. Of that enrollment, 2,889 students, or 7.4 percent of the total, were non-Catholic. The four schools of the Brooklyn Diocese with Title I

programs that are located in Bedford-Stuyvesant and East New York, where there are large Black populations, had non-Catholic student enrollments of 41, 43, 48 and 58 percent, respectively. The enrollment in those schools, therefore, reflects to a significant degree the racial and religious composition of communities in which they are located. Similarly, one-third of the total enrollment in the four schools of the Brooklyn Diocese in South Jamaica and Springfield Gardens is non-Catholic. Again, those communities have a large Black population, and the number of non-Catholics in the four schools reflects the composition of those communities.

24. The preference for Catholic students in the admissions process is a natural consequence of our desire to see that children of those who support the parish which supports the school should have free access to these schools. However, those schools are strongly community-oriented and admit students from all segments of the community after the needs of parishoners have been satisfied. Whenever the community in which the school is located has a significant non-Catholic population, as in the case with many of the schools of the Brooklyn Diocese with Title I programs on their premises, the consequence of the admissions policies of those schools is to admit significant numbers of non-Catholics to be educated in those schools.

25. Another element of the "profile" of the parochial schools described in the *Nyquist* and *Levitt* decisions was that those schools "impose religious restrictions on admissions." As is evident from the statistics that I have referred to, the schools in the Brooklyn Diocese with Title I programs on their premises generally do not, as a matter of policy and practice, restrict admissions on religious grounds.

Curriculum

26. The curriculum offered in the elementary and secondary schools of the Brooklyn Diocese contains all of

the secular courses prescribed by New York State law and also includes courses in religious instruction. In all courses offered in those schools, questions of religious and moral values are examined when they are relevant to the subject matter being taught. It is the inclusion of religious instruction as part of the regular curriculum and the value-oriented nature of that curriculum which, in my opinion, makes Catholic schools distinctive.

27. There are no religious restrictions on the secular content of the secular subjects offered in the elementary and secondary schools of the Brooklyn Diocese. Those responsible for the education offered in those secular courses are committed to the search for truth, and are not restricted in that search by any religious restraints. The secular content of the secular courses has its own academic integrity, and it would be a gross distortion of the educational process of our schools to restrict the secular content of those courses because of the religious beliefs of the Roman Catholic Church. Thus, our schools do not "impose religious restrictions on what or how the faculty may teach," as the Supreme Court assumed the parochial schools described in the "profile" in the *Nyquist* and *Levitt* decisions did.

28. It is true, of course, that there is not always a sharp line dividing the secular from the religious in the educational process. In the study of history, for example, a large part of the story of the development of Western civilization is the story of the impact of Christianity on that civilization. Of necessity, therefore, the course in Western Civilization will touch upon the history of Christianity and upon the conflicts that have divided Christianity into various denominations and sects. The history teacher's objective and role in our schools is to present an objective account from the point of view of the discipline of history of those conflicts. If that objective account of the conflicts is inconsistent with an account offered by Roman Catholic theologians, any reconciliation of those inconsistencies, if there is to be a rec-

onciliation, should be made by the theologian and not the history teacher, for it is the theologian who is most academically qualified to explain the points of difference on questions of faith and morals among the various Christian denominations.

29. Some of the secular subjects taught in the elementary and secondary schools in the Brooklyn Diocese, of necessity, touch upon questions of morals and values. While teachers are not restricted on how they treat those matters of morals and values, they are encouraged to address directly such matters and not shun them.

30. The teachers in the elementary and secondary schools of the Brooklyn Diocese do not engage in any effort to inculate students in specific religious or moral values. The concept of "inculcation" is simply inconsistent with the educational process. That concept suggests, both in its connotations and literal definition, an effort to induce students to accept ideas or values through coercion. The schools under my supervision do not engage in that activity, whether religious values or other aspects of learning are involved. Thus, the schools under my supervision do not have "as a substantial purpose the inculcation of religious values," a characteristic attributed to the parochial schools in the *Nyquist* and *Levitt* decisions when the Supreme Court described the "profile" of those schools.

31. While our schools do not seek to "inculcate" religious values, they do make a conscious effort to make students aware of such values so that they will be better citizens. Many of the values that are addressed are expressed in the teachings of the Roman Catholic Church. However, many of those values—such as justice, respect for the dignity of other persons and racial tolerance—are also shared by other religious denominations and our society in general. The purpose of examining those values in all aspects of the curriculum where they are relevant is to bring students to an understanding of those values and, if they freely choose, a commitment

to those values. Such an objective in no way differs from the efforts of the public schools to bring their students to a free commitment to such values as patriotism, honesty and truth in their dealings with others. The study of the horrors of the Holocaust in the social studies program of the New York City public schools is specifically intended to show students that religious and racial intolerance is an evil to be abhorred. It is also intended to encourage the students to commit themselves to the values of tolerance, justice and concern for others in society. The explicit value orientation of the curricula in the schools of the Brooklyn Diocese has a similar objective.

32. I should also note that the values that are addressed in the curricula of the schools of the Brooklyn Diocese are not exclusively or narrowly religious in nature. For example because those schools, including the schools with Title I programs, reflect the needs and aspirations of the communities in which they are located, the elementary and secondary schools of the Brooklyn Diocese which are located in communities with large ethnic populations will orient their curricula to take account of the ethnic concerns of the communities. Thus, a Diocesan school located in a predominantly Black community gives special attention to topics such as Black studies and Black history. Dealing with those ethnic concerns is as much a statement of values as including courses in religious instruction in the curriculum.

33. As I have previously mentioned, religious education is a regular part of the curriculum in the schools under my supervision. Parents who enroll their children in those schools, whether those parents are Catholics or members of some other religious faith, are told prior to enrollment that their children must participate in the entire curriculum of the schools, including that portion of the school day devoted to religious instruction.

34. In the *Nyquist* and *Levitt* decisions, the Supreme Court included as one element of the "profile" of parochial

schools that they required students to "attend instruction in the theology and doctrine of a particular faith." While all students in the schools under my supervision are required to attend religious instruction, the content of that instruction is not as narrow or as limited as the Supreme Court suggested in those two decisions.

35. The focus of religious instruction offered in the schools of Brooklyn Diocese is on the teachings of Christianity as the Roman Catholic Church understands those teachings. In the course of that instruction, teachings and beliefs that are peculiar to the Roman Catholic Church are examined and explained. Those who teach religious education classes are required to have a thorough understanding of those teachings and beliefs and are required to teach them accurately, not representing as Catholic doctrine something which is not.

36. However, the religious instruction offered in the schools of the Brooklyn Diocese is not limited or restricted to Catholic teaching or doctrine. The Roman Catholic Church is part of a broader Christian community, and many of its teachings and beliefs are shared by other religious denominations. Of necessity, therefore, much of what is taught in religious instruction is not narrowly sectarian in content. Moreover, our schools are conscious of the mandate from the Second Vatican Council to have respect for other Christian communities and to "joyfully acknowledge and esteem the truly Christian endowments from our common heritage" with other Christian churches. In the spirit of that mandate, the religious instruction offered in the schools in the Brooklyn Diocese, and particularly those schools with Title I programs and non-Catholics in the student body, shows respect and sensitivity for the religious beliefs of all students, whatever those beliefs may be.

37. No effort is made in the religious instruction offered by the schools of the Brooklyn Diocese to compel any student, whether he is Catholic or of some other religious faith, to accept as valid or adhere to the teachings

of the Roman Catholic Church. Indeed, any effort to do so would be in direct conflict with Roman Catholic teachings. One of those teachings is that faith is considered to be a gift of God to which each person must respond freely or not at all. It would be contrary to those teachings to attempt to compel any student to adhere to particular religious beliefs or to accept a faith to which he cannot freely subscribe. Thus, the schools under my supervision do not "require obedience by students to the doctrines and dogmas" of the Roman Catholic Church, as the Supreme Court suggested the parochial schools did in the *Nyquist* and *Levitt* cases.

38. Parents of children who subscribe to a religious faith other than the Roman Catholic faith enroll their children in the schools of the Brooklyn Diocese for a variety of reasons. One of their motivations is that they themselves are strongly religious people—whether they be Baptists or Muslims or Buddhists—and they wish their children to be exposed to religious values as a part of their education. But they enroll their children in Catholic elementary and secondary schools at considerable expense to themselves, and their primary objective is to obtain a sound education for their children. The schools of the Brooklyn Diocese would be defeating the expectations of those parents if they used the religious instruction or any other parts of the curriculum for purposes of proselytization or to compel the students to accept beliefs that they cannot in good conscience accept. Those schools would also be contradicting the ecumenical teachings of the Second Vatican Council and denigrating the social mission of the Roman Catholic Church in maintaining the schools in the inner city that are attended by a significant number of non-Catholics.

Religious Activities

39. Most of the elementary and secondary schools of the Brooklyn Diocese include some form of religious ob-

servance as part of the school day. More typically, that religious observance would be in the form of a prayer recited at the beginning or end of the school day, or before instruction begins in a particular class. In addition, many schools will schedule on an occasional basis and during regular school hours more formal liturgical observances. All students enrolled in those schools are expected to be present during those religious observances, but the degree or extent to which they participate is a matter of their own consciences. There are, however, some religious activities in the schools, such as the reception of the Sacraments, in which non-Catholic students are not permitted to participate.

40. One of the characteristics of the parochial schools described in the *Nyquist* and *Levitt* decisions was that they required "attendance of pupils at religious activities." The schools in the Brooklyn Diocese engage in that activity to the extent that I have described.

41. Parents of students who subscribe to a religious faith other than the Roman Catholic faith are told prior to registering their children that the children will be expected to be present for the type of religious observances that I have described. To my knowledge, no parent of a student who is of a religious faith other than the Roman Catholic faith has complained that his child's participation in those religious observances has in any way compromised the student's own religious beliefs or practices.

Conclusion

42. I have attempted in this affidavit to provide an accurate portrayal of the policies and practices of the elementary and secondary schools of the Brooklyn Diocese. I am aware that my description of the policies and practices of those schools is at odds with the description of parochial schools in the *Nyquist* and *Levitt* decisions and with many popular stereotypes of Catholic parochial

schools. However, those stereotypes reflect a profound misconception of the purposes and educational programs of the schools under my supervision.

43. Those stereotypes seek to portray Catholic parochial schools as having a singular and overriding objective of indoctrinating students in the Roman Catholic faith or of compelling them to subscribe to the beliefs of the Roman Catholic Church. While the schools of the Brooklyn Diocese do serve religious functions and do have religious objectives, they do not have the extreme characteristics that the stereotypes attribute to them.

44. The basic objective of the elementary and secondary schools in the Brooklyn Diocese, including those with Title I programs, is to provide their students with a sound education in an environment in which they are exposed to religious education and religious and moral values. Our goal is to produce students who have the knowledge and intellectual skills to be useful and productive members of their communities and who are also aware of the religious dimension of man.

/s/ Vincent D. Breen
REVEREND VINCENT D. BREEN

Subscribed and sworn to before me
this 22nd day of March, 1979.

/s/ Catherine B. Dumphy
CATHERINE B. DUMPHY
Notary Public, State of New York
No. 41-4506593
Qualified in Queens County
Commission Expires March 30, 1981

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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78 CV 1750 (ERN)

BETTY-LOUISE FELTON, CHARLOTTE GREEN, BARBARA HRUSKA, MERYL A. SCHWARTZ, ROBERT H. SIDE and ALLEN H. ZELON, PLAINTIFFS

—against—

SECRETARY, UNITED STATES DEPARTMENT OF EDUCATION, and THE CHANCELLOR OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, DEFENDANTS

and

YOLANDA AGUILAR, LILLIAN COLON, MIRIAM MARTINEZ and BELINDA WILLIAMS, INTERVENOR-DEFENDANTS

MEMORANDUM ORDER

This case presents another chapter in the ongoing saga concerning the constitutionality of provisions of Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 2701, *et seq.* *See Flast* v. *Cohen*, 392 U.S. 83 (1968). Plaintiff taxpayers seek declaratory and injunctive relief upon the ground that Title I violates the Establishment Clause of the First Amendment to the United States Constitution. The case is before the Court upon cross-motions for summary judgment.

The case was stayed pending the final outcome of *National Coalition for Public Education and Religious Liberty* v. *Harris* (*PEARL II*), 489 F.Supp. 1248 (S.D. N.Y. 1980) (three-judge court), *appeal dismissed*, 449 U.S. 808 (1980). By stipulation of the parties, this case is to be determined upon the trial and record in *PEARL*

II.[1] Thus, the Court has before it the exact same facts and evidence which persuaded the three-judge District Court in *PEARL II* to find Title I constitutional upon the basis of the record before it.

This Court has considered the thorough and lengthy unanimous decision of Judge Tenney in *PEARL II* and is of the opinion that it reaches the correct result for the reasons stated therein. Plaintiffs rely heavily upon language in *Meek* v. *Pittenger*, 421 U.S. 349, 367-73 (1975); however, they do not respond to Judge Tenney's numerous and accurate observations about the factual distinctions between the two cases. Simply put, the relevant equivalent of the extensive evidence derived from the many years of operation of the Title I program in New York City's schools was not before the courts in *Meek*. As a result, the conclusions reached therein were reasonable inferences drawn from the circumstances.

In the case at bar, however, although arguably some of the circumstances of the Title I program parallel the State program in *Meek*, the direct evidence demonstrates that the concerns of the *Meek* Court about the potential for the unconstitutional mingling of government and religion in the administration of this type of program have not materialized. Undoubtedly, the Supreme Court will not ignore the direct evidence of how Title I has functioned and operated in New York City's nonpublic schools for some seventeen (17) years in favor of plaintiffs' conjecture about the possibility of unconstitutional governmental activity inherent in the arrangements of this program. Therefore, the Court finds that defendants have sustained their burden of demonstrating that Title I, as administered in the nonpublic schools of New York City, does not offend the Establishment Clause of the

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[1] Plaintiffs' memorandum in s' pport of their motion adopts the *PEARL II* court's statement of facts as its own; therefore, there apears to be no dispute about the accuracy of the *PEARL II* court's findings.

First Amendment. Accordingly, defendants' motion for summary judgment is granted, and plaintiffs' motion for summary judgment is denied.

SO ORDERED.

The Clerk of Court is directed to enter judgment in favor of defendants dismissing the complaint. The Clerk is further directed to forward copies of this Memorandum Order to counsel for the parties.

/s/ Edward R. Neaher
U.S.D.J.

Dated: Brooklyn, New York
October 4, 1983

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CV 78-1750 (ERN)

BETTY-LOUISE FELTON, CHARLOTTE GREEN, BARBARA HRUSKA, MERYL A. SCHWARTZ, ROBERT H. SIDE and ALLEN H. ZELON, PLAINTIFFS

—against—

SECRETARY, UNITED STATES DEPARTMENT OF EDUCATION, and THE CHANCELLOR OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, DEFENDANTS

and

YOLANDA AGUILAR, LILLIAN COLON, MIRIAM MARTINEZ and BELINDA WILLIAMS, INTERVENOR-DEFENDANTS

JUDGMENT

[Filed Oct. 20, 1983]

A memorandum order of Honorable Edward R. Neaher, United States District Judge, having been filed on October 11, 1983, granting defendants' motion for summary judgment, denying plaintiffs' motion for summary judgment, and directing the Clerk of Court to enter judgment in favor of defendants dismissing the complaint, it is

ORDERED and ADJUDGED that the plaintiffs take nothing of the defendants; that the defendants' motion for summary judgment is granted; that the plaintiffs' motion for summary judgment is denied; and that judgment is entered in favor of defendants dismissing the complaint.

/s/ Robert C. Heinemann
ROBERT C. HEINEMANN
Clerk of Court

Dated: Brooklyn, New York
October 17, 1983

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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78 CV 1750 (ERN)

BETTY-LOUISE FELTON, CHARLOTTE GREEN, BARBARA HRUSKA, MERYL A. SCHWARTZ, ROBERT H. SIDE and ALLEN H. ZELON, PLAINTIFFS

—against—

SECRETARY, UNITED STATES DEPARTMENT OF EDUCATION, and THE CHANCELLOR OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, DEFENDANTS

and

YOLANDA AGUILAR, LILLIAN COLON, MIRIAM MARTINEZ and BELINDA WILLIAMS, INTERVENOR-DEFENDANTS

NOTICE OF APPEAL

PLEASE TAKE NOTICE that the plaintiffs in this action hereby appeal to the United States Court of Appeals for the Second Circuit from the memorandum order of the United States District Court for the Eastern District of New York, filed on October 13, 1983, and from the judgment entered on such order by the Clerk of the Court and filed on October 20, 1983 denying plaintiffs' motion for summary judgment, granting defendants' and intervenor-defendants' cross-motion for summary judgment, and dismissing the complaint in the action, and plaintiffs hereby appeal from each and every part of such order and judgment.

Dated: December 1, 1983

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

83-6359

BETTY-LOUISE FELTON, CHARLOTTE GREEN, BARBARA HRUSKA, MERYL A. SCHWARTZ, ROBERT H. SIDE and ALLEN H. ZELON, APPELLANTS

v.

SECRETARY, UNITED STATES DEPARTMENT OF EDUCATION, and THE CHANCELLOR OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, APPELLEES

and

YOLANDA AGUILAR, LILLIAN COLON, MIRIAM MARTINEZ and BELINDA WILLIAMS, APPELLANT-INTERVENORS

On Appeal from the United States District Court
for the Eastern District of New York

[Filed August 2, 1984]

NOTICE OF APPEAL

PLEASE TAKE NOTICE that appellee-intervenors Yolanda Aguilar, Lillian Colon, Miriam Martinez and Belinda Williams appeal the Judgment of this Court in this case to the United States Supreme Court pursuant to 28 U.S.C. § 1252.

Appellee-intervenors Yolanda Aguilar, *et al.*, note that the decision of this Court in this case provides that an appeal of its decision to the Supreme Court shall operate

to stay the mandate of this Court until the final disposition of the appeal by the United States Supreme Court. Slip Op. at 5108.

Respectfully submitted,

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Counsel for
Appellee-Intervenors

CERTIFICATE OF SERVICE

I hereby certify that I have, this 2nd day of August, 1984, served a copy of this "Notice of Appeal," by first-class mail, postage prepaid, upon the following:

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Yolanda Aguilar, *et al.*

SUPREME COURT OF THE UNITED STATES

No. 84-237

YOLANDA AGUILAR, ET AL., APPELLANTS

v.

BETTY-LOUISE FELTON, ET AL.

Appeal from the United States Court of Appeals
for the Second Circuit

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. This case is consolidated with case No. 84-238, *Secretary, United States Department of Education* v. *Betty-Louise Felton, et al.* and case No. 84-239, *Chancellor of the Board of Education of City of New York* v. *Betty-Louise Felton, et al.*, and a total of one hour is allotted for oral argument.

October 9, 1984

SUPREME COURT OF THE UNITED STATES

No. 84-238

SECRETARY, UNITED STATES DEPARTMENT OF EDUCATION, APPELLANT

v.

BETTY-LOUISE FELTON, ET AL.

Appeal from the United States Court of Appeals for the Second Circuit

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. This case is consolidated with case No. 84-237, *Yolanda Aguilar, et al.* v. *Betty-Louise Felton, et al.* and case No. 84-239, *Chancellor of the Board of Education of City of New York* v. *Betty-Louise Felton, et al.*, and a total of one hour is allotted for oral argument.

October 9, 1984

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SUPREME COURT OF THE UNITED STATES

No. 84-239

CHANCELLOR OF THE BOARD OF EDUCATION OF CITY OF NEW YORK, APPELLANT

v.

BETTY-LOUISE FELTON, ET AL.

Appeal from the United States Court of Appeals for the Second Circuit

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. This case is consolidated with case No. 84-237, *Yolanda Aguilar, et al.* v. *Betty-Louise Felton, et al.* and case No. 84-238, *Secretary, United States Department of Education* v. *Betty-Louise Felton, et al.*, and a total of one hour is allotted for oral argument.

October 9, 1984

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